Official Gazette

REPUBLIC OF THE PHILIPPINES

EDITED AT THE OFFICE OF THE PRESIDENT, UNDER COMMONWEALTH ACT NO. 638
ENTERED AS SECOND-CLASS MATTER, MANILA POST OFFICE, DECEMBER 26, 1905

VOL. 55 MANILA, PHILIPPINES, JANUARY 5, 1959 No. 1

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OFFICIAL WEEK IN REVIEW

December 28.— PRESIDENT Garcia, in an extemporaneous speech in Laoag, Ilocos Norte, this morning gave the green light to Ilocano farmers to plant and produce more tobacco when he said the possibility of opening markets abroad for surplus Virginia tobacco is now under study.

The President flew from Baguio to Laoag where he attended the inauguration of the new provincial capitol and the Second Regional (Northern Luzon) Conference on Tourism.

The President was introduced by Rep. Ferdinand Marcos, House minority floor leader and executive vice-president of the Liberal Party. Marcos called on the people to unite and work in harmony for the common good regardless of differences in politics.

As minority floor leader of the House, Marcos said he had vigorously opposed proposed legislation which he feels would not be of benefit to the people. However, he added, when a bill is presented to Congress and he believes that it would redound to the benefit of the people, he fought for its passage regardless of whether it was sponsored by a Liberal or a Nacionalista.

Rep. Antonio Raquiza of the first district of Ilocos Norte, also a Liberal, praised the President for his concern for the welfare of the Ilocanos, particularly the tobacco farmers, which was proven when he rejected the proposed importation of 2,000,000 kilos of tobacco. He also credited the President for bringing prosperity and progress to the Ilocos region.

President Garcia heard mass at the guest house early this morning. After breakfast, the President and his party took off from the Loakan airfield, in Baguio, for Laoag and arrived there after an hour's trip. He was met at the airport by Gov. Toribio L. Peralta, Reps. Marcos and Raquiza, Mrs. Imelda R. Marcos, Mrs. Teresa L. Peralta, all the mayors of the province and governors of the Ilocos provinces and Batanes, and goverment officials and civic groups.

After delivering his speech, President Garcia led other guests in making a round of the new Capitol building and visited exhibits of handicraft arts made by students of the Ilocos Norte School of Arts and Trade.

Mrs. Alejo Mabanag and Mrs. Teresa Peralta cut the ceremonial ribbon symbolizing the inauguration of the Capitol building followed by the blessing of the capitol by Most Rev. Juan C. Sison, Archbishop of Nueva Segovia. The master of ceremonies at the program was Jose E. Evangelista, member of the provincial board.

Upon arrival of the President and his party at Laoag, they proceeded to the St. Williams parish church where a *Te Deum* was sung for the President's honor. President Garcia and his party were honored at the banquet held at St. Williams College auditorium.

After luncheon, President Garcia and his party returned to Baguio, arriving at 3:00 p.m.

Work on the reconstruction of the Capitol building was started during the incumbency of Rep. Raquiza as governor of the province and completed after one and a half years. The building was designed by Aniceto T. Cajigal, Bureau of Public Works architect, while the construction was undertaken by Ricarte Puruganan.

After a brief rest this afternoon, President Garcia returned to his work on the preparation of his state-of-the-nation message to Congress. He did not receive any callers and after supper he returned to his bedroom where he worked until late in the evening.

December 29.—PRESIDENT and Mrs. Garcia received their Christmas presents from newspaper reporters covering Malacañang in an outdoor ceremony held in the terrace of the Guest House.

Artemio Garlit, president of the Malacañang Newsmen Association, presented the gifts which consisted of books for the President and handkerchiefs for the First Lady.

President Garcia thanked the reporters for the presents and said he and Mrs. Garcia appreciated greatly their thoughtfulness.

After the gift presentation this morning, the President gave an impromptu press conference.

Earlier, the Chief Executive received Defense Secretary Jesus Vargas and conferred with him on changes on the AFP command resulting from the retirement of Lt. Gen. Alfonso Arellano, outgoing chief of staff.

It was agreed at this conference that Col. Dionisio Ojeda, Fort McKinley command, will be appointed to succeed Brig. Gen. Isagani Campo, II MA commander who was recently chosen to replace Brig. Gen. Pelagio Cruz as PC chief.

Baguio Mayor Alfonso Tabora and PCAPE Chairman Buenaventura Ocampo called on the President this morning, accompanied by some members of the PCAPE staff; namely, Maj. Fred Salcedo, Mario Valonizado, and Apolonio Villanueva.

Justice Ocampo submitted to the President the findings and recommendations of his office on an allegedly questionable sale of government lots in Baguio to private parties.

Other presidential callers were NDC General Manager Jose Panganiban and Board Chairman Jose Rodriguez, who reported on the progress of negotiations with Japanese shipbuilders on the purchase by the Philippine Government of several ocean-going vessels.

President Garcia had his lunch with Senate President Protempore Fernando Lopez, Mayor Tabora, and the newspapermen covering the President.

In the afternoon, the President received Education Secretary Manuel Lim, who returned recently from abroad. Lim pressed the President to accept his resignation from the Cabinet which was accepted effective upon the submission of the secretary's annual report of his department.

After supper, President Garcia retired to his room to work on his message to Congress.

December 30.—THIS morning, the President warned student leaders attending the CONDA meet in Baguio against dangers of communism which first destroys the spiritual moorings of the people and then effects mastery over individual through fear, intimidation, and deceit.

He cited the experience of Japan with Red China as an example and said the Japanese have now learned the lesson and refuse to deal further with the mainland of China.

The Philippines, the President said, is determined not to have any diplomatic or trade relations with the communist countries.

The Chief Executive met the heads of student delegations to the CONDA meet at the Guest House this morning; namely, Lino Illera, Manuel Lara, Gene Darvin, Jose Alger, Delfin Dalipe, Rolando Conlu, Rudy Golez, Moises Mercado, Sonny Osmeña, Gerry Mayo, Jr., Titong Imperial, Jun Valdez, Cesar Ibaya, Mike Paala, Bert Javier, and Napoleon Lechoco, head of the Consultative Council of Students.

Earlier, the President and Mrs. Garcia received members of the Ladies Circle of Baguio who paid a courtesy call on the First Couple of the country. The Ladies Circle is composed of representative elements from various socio-civic groups of the Pines City. The group was led by Mrs. Ramon P. Mitra and Mrs. Alfonso Tabora.

The members of the NASSCO board of directors conferred with the President regarding matters pertaining to the government steel firm. Among those present at the conference were Directors Maximino Calalang, Ramon

T. Jimenez, Aniceto Crisostomo, and Eligio Herrera, Auditor Graciano Rapatan, and acting Board Secretary Nieves Dizer.

Other morning callers were Juan J. Carlos, chairman of the MRR board of directors, and Capt. Hilarion Benedicto.

After a late lunch the President gave a press conference and then retired to his room for a brief rest.

In the afternoon, U.S. Ambassador Charles Bohlen and former President Sergio Osmeña paid separate courtescy calls on President Garcia.

The Chief Executive studied pardon papers of prisoners recommended for pardon and release on New Year, January 1, until late in the evening.

PRESIDENT Garcia this afternoon doused anew a congressional move to devaluate the Philippine peso to strengthen the local currency in line with the monetary reforms instituted recently in Europe.

Reacting strongly to news reports that a group of lawmakers is sponsoring a resolution urging the peso devaluation, President Garcia said: "They will not get my consent."

The Chief Executive recalled that Senate President Eulogio Rodriguez, in reporting on his observations in Europe, had disclosed that the currency devaluation has not helped solve financial and monetary problems in France and Great Britain.

The devaluation move was led by fiscal and economic experts of both chambers of Commerce who advocated the readjustment of the country's monetary policies in the face of the devaluation of the French franc and the partial convertibility of the English pound.

However, the President lauded the present monetary reforms in Europe as paving the way for the proposed adoption of the multiple currency reserve system.

In a brief press interview after lunch at the Guest House, President Garcia:

1. Directed the National Rice and Corn Corporation to look into the report of Sen. M. Jesus Cuenco that the price of corn had skyrocketed in view of a barter permit granted to Cebu businessmen. The President denied having received Cuenco's wire but he indicated that he will look into that report further.

2. Disclaimed knowledge of a report from Sen. Lorenzo Sumulong on the waning prestige of the Philippine delegation in the United Nations, saying he had not received reports from solon returning from the world body sessions.

When asked by newsmen on the solon's move to force him to devaluate the peso, the President perked up and said, "They will not get my consent."

President Garcia had taken a strong stand against devaluation despite a clamor from bankers and economists to depreciate the value of the peso.

Asked to comment on news reports regarding Cuenco's protest against the corn barter, the President replied that he had not received the telegram. But he said he will direct the NARIC to look into the price situation of corn in Cebu.

Sen. Cuenco said the price of corn in Cebu City has gone up from ₱5.50 a cavan to ₱7.50.

The President stated that the ideal price of corn would be ₱6.80 a cavan, adding that ₱7.50 is exorbitant for the cereal.

December 31.—PRESIDENT Garcia, looking hale and refreshed, returned to Manila at 2:30 o'clock this afternoon. The President was accompanied by the First Lady, who joined him in the Pines City last Sunday.

The President motored to Baguio last Friday and addressed the P.E.N. conference the following morning.

The President left Baguio at 9:30 o'clock this morning, after breakfast and mass at the Guest House.

Upon arrival in Manila, the President proceeded to his private residence on Bohol Avenue, Quezon City.

At 5 o'clock, the President motored to Malacañang where he inducted the newly-promoted generals of the Armed Forces of the Philippines.

The President swore in Maj. Gen. Manuel F. Cabal as lieutenant general. Cabal will take over as chief of staff, vice Lt. Gen. Alfonso Arellano, who retired.

President Garcia likewise added another star to Brig. Gen. Pelagio Cruz, who is the new AFP vice-chief of staff. The other general inducted was Brig. Gen. Dionisio Ojeda, who will take over the second PC Zone command. vice Brig. Gen. Isagani V. Campo, new chief of the Constabulary.

The President granted the traditional New Year's Day pardon to eight prisoners upon the recommendation of the Board of Pardons and Parole, Malacañang announced today.

The President also granted conditional pardon to 39 other prisoners, and commuted the sentence of eight convicts.

January 1.—PRESIDENT and Mrs. Garcia were "at home" today to government officials, the diplomatic corps, members of different organizations, and other well-wishers who called at Malacañang the whole day to greet the First Couple of the land and wish them "A happy and prosperous New Year."

Early this morning, the President, the First Lady, relatives, and close friends heard mass said by Mons. Rufino Santos, Archbishop of Manila, in the Malacañang chapel. After the mass, breakfast was served in the family dining room.

Earliest well-wishers at the Palace this morning were Don Manolo Elizalde and Capt. Hilarion Benedicto, who were received in the anteroom of the President's bedroom.

At exactly 10 o'clock, President and Mrs. Garcia went out to the reception hall to receive their scheduled callers.

First to go up the Palace stairs to greet the President and the First Lady were Vice-President and Mrs. Diosdado Macapagal and their children.

Mons. Egidio Vagnozzi, Papal nuncio, led the diplomatic corps in extending their best wishes to President and Mrs. Garcia.

The most picturesque among this morning's well-wishers were the wives of staff members of the Japanese and Indonesian embassies who came in their colorful native costumes.

After receiving the diplomatic corps, the President and the First Lady went to the state dining room for the traditional exchange of toasts.

Mons. Vagnozzi, dean of the local diplomatic corps, expressed the gratitude of the members for President Garcia's efforts to make their stay more pleasant.

He also wished the health and success of the President and the Filipino people in the coming year.

In his response the Chief Executive thanked the members of the diplomatic corps for their cooperation, conveyed his greetings to their government and people, and wished the continued health and happiness of the heads of state represented in the corps.

After the ceremony, President and Mrs. Garcia returned to the reception hall and continued receiving well-wishers until 12 noon.

About 12:30 p.m., President Garcia phoned his greetings to Mrs. Trinidad Roxas, widow of the late President Roxas, who was giving a luncheon at the old Selecta Restaurant to about 200 persons who remembered the 67th birth anniversary of Roxas.

After a late lunch, the First Couple rested. At 4 p.m. they went to the ceremonial hall to receive the general public until 5 o'clock. After receiving all the well-wishers, President and Mrs. Garcia rested until suppertime.

January 2.—PRESIDENT Garcia approved the purchase of 12 ocean-going vessels from Japan by the National Development Company after consultations with his economic advisers and top officials of the NDC in Malacañang today.

The purchase of these ships is in line with the Administration's aim to build up the country's maritime fleet in order to conserve our dollar resources and encourage the expansion of our foreign trade.

A further study of minor details of the contract will be made during the regular Cabinet meeting on Wednesday.

Under the terms of the contract, Japanese shipbuilders will build 12 ships of 11,500 tons each and with a speed of 18 knots an hour. The vessels will cost $293 per dead weight ton to build or a total of $3,600,000 each.

Payment for the vessels will be made on a seven-year installment plan and delivery will be made one year after the signing of the contract.

Present at the closed-door conference were Finance Secretary Jaime Hernandez; Justice Secretary Jesus Barrera; Executive Secretary Juan C. Pajo; Budget Commissioner Dominador Aytona; CB Deputy Governor Andres Castillo; Jose S. Rodriguez, chairman of the NDC board of directors; Jose H. Panganiban, NDC general manager; Simeon Gopengco, NDC auditor; and Jose R. Platon, technical assistant to the board.

Today being the first Friday of the year, President and Mrs. Garcia received Holy Communion during an early morning mass in the Malacañang chapel.

After the mass President Garcia had a breakfast conference with Secretary Pajo on pending matters. His subsequent meeting with economic advisers and NDC officials lasted from 9:30 a.m. to 1 p.m.

PRESIDENT Garcia disclosed this afternoon he was considering Sen. Alejo Mabanag and Dean Feliciano Jover Ledesma of the San Beda College of Law for appointment to the Cabinet.

He made this disclosure at his first press conference of the new year during which he deplored "defeatism and negative thinking" and appealed to the press to help him fight this gloomy outlook.

A Malacañang spokesman explained that the "defeatism and negative thinking" mentioned by the President referred to the pessimism in some quarters over the Administration's efforts to salvage the country from its economic and financial difficulties.

At his press conference, President Garcia also:

1. Said he will confer with US Ambassador Charles Bohlen today on the Laurel-Langley agreement;

2. Defended his plan to organize by legislation an anti-graft tribunal;

3. Minimized the political effect of the defection of former Secretary of Labor Eleuterio Adevoso from the Progressive Party to the Liberal party; and

4. Called the flight of Cuban President Fulgencio Batista from Havana to the Dominican Republic as the "inevitable end of all dictators."

The President opened his press conference by greeting newspapermen.

He expressed the hope that the press will cooperate with the Administration by reporting the achievements that will be achieved in his second year in Malacañang.

"I hope you will help the Administration," he said, "in fighting the defeatism and negative thinking in the country."

The President said he expects more optimism and would try to cope up with the problem that will confront his administration.

At the same time, the President said he was scheduled to confer with Bohlen today to take up the controversial points in the implementation of the Laurel-Langley Agreement.

Bohlen visited the President early this week in Baguio and sought clarification on some controversial points in the implementation of the agreement.

The President also admitted plans of reorganizing his Cabinet.

He made the admission when asked by a newsman as to whether or not he is considering Sen. Mabanag for the position of secretary of justice.

He likewise admitted that Dean Ledesma is among those mentioned for the position of secretary of education vice Manuel Lim, who resigned from the Cabinet effective sometime this month.

In confirming reports that he is considering Mabanag for secretary of justice, the President admitted that he had conferred with the senator in Baguio early this week. Secretary Jesus Barrera, Malacañang sources said, is groomed for appointment to the Supreme Court to fill up the vacancy left by Justice Alfonso Felix, who retired last year.

The President told newsmen he had finished studying the reports of Secretary Barrera on the administrative cases of Under-secretary of Finance Jose P. Trinidad and Director Laureano G. Marquez of the Bureau of Animal Industry.

He said he has made up his mind on these cases and will start writing his decision shortly.

President Garcia minimized the "political importance" of Adevoso's decision to join the Liberal Party.

President Garcia recalled that Adevoso lost in his own town, Parañaque, Rizal, in the last senatorial elections. Adevoso was then one of the senatorial candidates of the Progressive Party in the Philippines.

The President defended anew his plan to create by legislation an anti-graft court.

He said that the tribunal will be under the Department of Justice and will have judicial functions.

Asked if he could not just fire erring government officials, the President said he has to do his "house-cleaning" work in accordance with the "due process clause" of the Constitution.

He pointed out that a judicial investigation of graft cases will preclude charges the Administration would "whitewash" the complaints against government officials.

The President also said he is studying recommending anew to Congress the adoption of price control measures in view of the upsurge of prices of prime commodities.

It was hinted that the upward trend in the prices of essential goods was spurred by the application of the new high tariff rates since January 1 in the implementation of the Laurel-Langley agreement.

January 3.— THIS MORNING, the President had breakfast with close friends who came to greet him a belated "Happy New Year."

Present at the breakfast held at the President's private residence on Bohol Avenue, Quezon City, were Alfonso Calalang, president of the Bankers Association of the Philippines; Alfredo Montelibano, president of the Chamber of Agriculture and Natural Resources; Virginia Yaptinchay, head of the import division of the Central Bank; Juan C. Carlos, board chairman of the Manila Railroad Company; Conrado Sevilla, vice-president of the Philippine National Bank; Rodolfo Andal of the Government Service Insurance System; German Neri, board member of the National Marketing Corporation; Geminiano Yabut, president of La Mallorca Pambusco Transportation Company; Alfonso Ponce Enrile; Col. Ramon Zosa; and Major Teofilo Zosa.

PRESIDENT Garcia was invested with Malaya's most distinguished award, "Darjah Utama Seri Mahkota Negara" (The Most Exalted Order of the Crown), by visiting Prime Minister Yang Teramat Mulia Tunku Abdul Rahman Putra of the Federation of Malaya in a ceremony held in the ceremonial hall of Malacañang today.

The Chief Executive received the award temporarily pending legislative concurrence for him to accept formally the decoration.

President Garcia said he considered the Prime Minister's visit to the Philippines and the honor bestowed on him as "unmistakable signs of the desire of our peoples to build permanent and lasting bases for friendship, understanding, and cooperation between our two countries."

Prime Minister Rahman presented the award on behalf of His Majesty, the Paramount Ruler of the Federation of Malaya, "in recognition of President Garcia's championing the struggle for freedom during both war and peace and for his efforts towards the extension of international goodwill and cooperation."

Riding in an apple-green 1958 Cadillac convertible bearing plate number "1" and preceded by an escort of motorcycle cops, the Prime Minister and Foreign Secretary Felixberto Serrano entered the gates of Malacañang at 12:55 p.m., one hour after his arrival at the Manila International Airport.

An honor guard from the Presidential Guard Batallion rendered full military honors to the visiting dignitary.

After receiving and acknowledging the honors, Prime Minister Rahman and his wife, Puan Sharifah Rosiah, met and shook hands with President and Mrs. Garcia, who met the visitors in the lobby of the Palace front door.

In the ceremonial hall, the Prime Minister and his entourage met members of the Cabinet and their ladies.

During the investiture ceremony, Prime Minister Rahman read a letter addressed to President Garcia from His Majesty, the Paramount Ruler of the Federation of Malaya. After the ceremony, President and Mrs. Garcia and Prime Minister and Mrs. Rahman proceeded to the state dining room where they had their lunch in private.

IN the evening, the visiting dignitary and his lady were formally honored with a state dinner given by the President and the First Lady at the social hall of Malacañang.

The formal dinner was followed by the presentation of the decoration, "Raja of the Order Sikatuna," on Prime Minister Rahman by the President.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Finance

BUREAU OF CUSTOMS

CUSTOMS ADMINISTRATIVE ORDER NO. 232

August 14, 1958

CUSTOMS COLLECTION DISTRICTS DEFINED

PARAGRAPH I.—In pursuance of the provisions of Section 701 of the Tariff and Customs Code of the Philippines, the Customs collection districts in the Philippines, as defined in Customs Administrative Order No. 220, are hereby redefined as follows:

First.—The District of San Fernando, comprising the province of Batanes and all islands within the jurisdiction thereof, the provinces of Ilocos Norte, Ilocos Sur, Abra, Cagayan, Isabela, Mountain Province, La Union, Nueva Vizcaya, Pangasinan and the northern half of Zambales to and including the town of Palauig, and all other islands, covered by the provinces, named, in which San Fernando, La Union, shall be the principal port of entry.

Second.—The District of Manila, comprising all the provinces in Luzon (except northern half of Zambales from the town of Palauig and the provinces included in the first and third districts and the whole Bicol Region); the Calamianes, Cuyo and Cagayan Islands, the island of Palawan; and all other islands adjacent thereto and in the geographical district covered by the islands and provinces named, in which Manila shall be the principal port of entry.

Third.—The District of Batangas, comprising the provinces of Batangas and Quezon; the islands of Lubang, Mindoro, Marinduque and all other islands adjacent thereto and in the geographical district covered by the islands and provinces named, in which Batangas shall be the principal port of entry;

Fourth.—The District of Jose Panganiban (formerly Mambulao) comprising the provinces of Camarines Norte and Camarines Sur; and all other islands adjacent thereto and in the geographical district of the provinces named, in which Jose Panganiban (formerly Mambulao) shall be the principal port of entry.

Fifth.—The District of Legaspi–Tabaco, comprising the provinces of Albay and Sorsogon; the islands of Burias and Ticao; the province of Catanduanes; the northeastern coast of the island of Masbate from Bugui Point to Caduruan Point; and all the islands adjacent thereto and in the geographical district covered by the islands and provinces named, in which Legaspi–Tabaco shall be the principal port of entry.

Sixth.—The District of San Jose, comprising the island of Samar, and all other islands adjacent thereto and in the geographical district of the island named, in which San Jose shall be the principal port of entry.

Seventh.—The District of Iloilo, comprising the islands of Tablas, Romblon, and Sibuyan; the southwestern coast of the island of Masbate from Bugui Point to Caduruan Point; the island of Panay; the province of Occidental Negros, except its eastern coast which is included in the District of Dumaguete; and all other islands adjacent thereto and in the geographical district of the island and province named, in which Iloilo shall be the principal port of entry.

Eighth.—The District of Dumaguete, comprising the province of Oriental Negros; the island of Siquijor; the eastern coast of the province of Occidental Negros from the boundary of both provinces up to and including the town of Escalante of the province of Occidental Negros; and all other islands adjacent thereto and in the geographical district of Oriental Negros, eastern coast of Occidental Negros, and the island named, in which Dumaguete shall be the principal port of entry.

Ninth.—The District of Cebu, comprising the islands of Cebu and Bohol; and all other islands adjacent thereto and in the geographical district of the islands named, in which Cebu shall be the principal port of entry.

Tenth.—The District of Tacloban, comprising the islands of Leyte, Dinagat and Siargao; the province of Surigao; and all other islands adjacent thereto and in the geographical district of the islands and province named, in which Tacloban shall be the principal port of entry.

Eleventh.—The District of Zamboanga, comprising the provinces of Agusan, Misamis Oriental and Misamis Occidental; the northern coast of the province of Lanao, including Lake Lanao; the island of Camiguin; and all other islands adjacent thereto and in the geographical district of the provinces and islands named, in which Cagayan de Oro shall be the principal port of entry.

Twelfth.—The District of Zamboanga, comprising the provinces of Zamboanga del Norte and Zam-

boanga del Sur; the island of Basilan; and all other islands adjacent thereto and in the geographical district of the provinces and island named, in which Zamboanga shall be the principal port of entry.

Thirteenth.—The District of Davao, comprising the provinces of Davao, Cotabato, Bukidnon, and Lanao, except its northern coast and Lake Lanao; and all islands adjacent thereto, and all the islands in the Philippine group south of the provinces of Cotabato and Davao, in which Davao shall be the principal port of entry.

Fourteenth.—The District of Jolo, comprising the islands of Jolo, Balabac, Siasi, Cagayan de Sulu, Bongao, Tawi-Tawi, Sibutu and Sanga-Sanga, and all other islands adjacent thereto and in the geographical district covered by the islands named, in which Jolo shall be the principal port of entry.

PAR. II. Customs Administrative Order No. 220 is hereby superseded.

PAR. III. This Order shall take effect upon its approval by the Secretary of Finance.

PAR. IV. Philippine Customs Officials shall give due publicity to the terms of this Order.

ELEUTERIO CAPAPAS
Commissioner of Customs

Approved: September 3, 1958.

JAIME HERNANDEZ
Secretary of Finance

CUSTOMS ADMINISTRATIVE ORDER NO. 233

January 14, 1958

REQUIRING REGULAR IMPORTERS TO FILE GENERAL IMPORTER'S BOND, AND SUPPLEMENTING CUSTOMS ADMINISTRATIVE ORDER NO. 389 (OLD SERIES), AS AMENDED.

In pursuance of the provisions of Section 608 in relation to Sections 602 and 1204 of the Tariff and Customs Code of the Philippines, the following regulations for the filing of general importer's bond in all ports of entry in the Philippines are hereby promulgated.

PARAGRAPH I. Regular importers shall file a general importer's bond in amounts proportional to the total amount of their dollar allocation, or the total value of goods allowed in barter permit to be imported during the preceding calendar year, as following indicated:

Dollar allocation or total value allowed to be imported during preceding calendar year	Amount of bond
Not more than ₱20,000.00	₱5,000.00
From ₱20,001.00 to ₱60,000.00	10,000.00
From ₱60,001.00 to ₱100,000.00	15,000.00
Above ₱100,000.00	20,000.00

Should the amount of the bond not be determinable on the basis of the foregoing, the bond shall be in the amount of ₱10,000.00 unless the importer can show by satisfactory proof that he or it is entitled to a lesser bond the amount of which shall be determined on the basis of the total CIF value of his or its importations during the preceding year.

PAR. II. General Importer's Bond shall be filed annually to cover obligations and liabilities mentioned in Par. V incurred by a regular importer during the corresponding calendar year. They are never cancelled but shall become null and void only when the obligations thereunder stated have been fully complied with after which they are to be retained and filed for future reference. The bond required herein shall be in the form of surety bond executed by an importer, as principal, and a surety company, as surety. Only surety companies duly authorized to become surety upon official recognizances, stipulations, bonds and undertakings shall be accepted.

PAR. III. The term "regular importers" means those who import merchandise, goods, wares or articles on more than one occasion, regularly or otherwise.

PAR. IV. Customs brokers signing for and in behalf of a regular importer may no longer be required to file a regular importer's bond.

PAR. V. The bond herein required shall be liable and answerable for short duties, special import tax, other taxes and charges due on importations, including fines and surcharges imposed thereon under the Tariff and Customs Law.

PAR. VI. No import entry shall be accepted unless it is first shown that the importer has already filed the bond required herein.

PAR. VII. Should any existing bond be deemed by the collector of customs to be inadequate, he may require an additional bond in an amount sufficient to meet the deficiency.

PAR. VIII. Regular importers who or which are exempt from payment of duties and taxes shall not be required to file general importer's bonds.

PAR. IX. Customs Administrative Order No. 389, as amended, is hereby supplemented.

PAR. X. This Customs Administrative Order shall take effect fifteen (15) days after its approval by the Secretary of Finance.

ELEUTERIO CAPAPAS
Commissioner of Customs

Approved in accordance with our first indorsement dated November 14, 1958 relative to this matter.

JAIME HERNANDEZ
Secretary of Finance

DEPARTMENT OF FINANCE
MANILA

5th Indorsement
November 14, 1958

Respectfully returned to the Commissioner of Customs, Manila, hereby approving, in view of the representation in the preceding 4th indorsement hereon of that Office, the within Customs Administrative Order dated January 14, 1958, requiring regular importers to file general importers' bond, said Customs Administrative Order to take effect on January 1, 1959.

JAIME HERNANDEZ
Secretary of Finance

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 182

DESIGNATING JUSTICE OF THE PEACE ILUMINADO TALE OF VALENCIA, ORIENTAL NEGROS AS ACTING MUNICIPAL JUDGE OF DUMAGUETE CITY.

December 11, 1958

In the interest of the administration of justice and pursuant to the provisions of section 75 of Republic Act 327, otherwise known as the Charter of the City of Dumaguete, Mr. Iluminado Tale, Justice of the Peace of Valencia, Oriental Negros, is hereby designated Acting Municipal Judge of Dumaguete City, effective December 8, 1958, and to continue only until the return to office of the regular incumbent.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 183

December 15, 1958

DESIGNATING JUSTICE OF THE PEACE GUELLERMO ROMERO OF PARAÑAQUE, RIZAL, AS ACTING MUNICIPAL JUDGE OF PASAY CITY ON DECEMBER 17, 1958, TO TRY A CERTAIN CRIMINAL CASE AND THEREAFTER, EVERY TIME THE CASE IS SET FOR HEARING PROVIDED JUDGE LUCIO TIANCO GOES ON LEAVE.

In the interest of the administration of justice and pursuant to the provisions of section 76 of Republic Act No. 183, as amended, otherwise known as the Charter of Pasay City, Mr. Guillermo Romero, Justice of the Peace of Parañaque, Rizal, is hereby designated Acting Municipal Judge of Pasay City, on December 17, 1958, and every time Judge Romero has to try Criminal Case No. 8370, entitled People *vs.* Aurelio P. Reyes, et al., of the Municipal Court of Pasay City, provided Municipal Judge Lucio Tianco goes on leave every time the case is set for hearing.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 184

December 10, 1958

DESIGNATING CHIEF CLERK ATTY. TOMAS BELDEROL OF THE OFFICE OF THE PROVINCIAL OF BOHOL AS SPECIAL COUNSEL TO ASSIST THE PROVINCIAL FISCAL OF SAID PROVINCE.

In the interst of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Atty. Tomas T. Belderol, Chief Clerk in the Office of the Provincial Fiscal of Bohol, is hereby designated Special Counsel to assist the Provincial Fiscal of Bohol in the discharge of his duties, subject to the direction and control of the Provincial Fiscal, effective immediately and to continue until further orders, without additional compensation.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 185

December 11, 1958

AUTHORIZING DISTRICT JUDGE FRANCISCO GERONIMO OF CAVITE, BRANCH II, TO ATTEND EFFECTIVE IMMEDIATELY, TO INTERLOCUTORY MATTERS PERTAINING TO BRANCH I.

In the interest of the administration of justice and pending the appointment of a permanent judge for Branch I of the Court of First Instance of Cavite, the Honorable Francisco Geronimo, District Judge of Cavite, Branch II, is hereby authorized, in addition to his regular duties, to attend, effective immediately, to interlocutory matters pertaining to Branch I.

JESUS G. BARRERA
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF FORESTRY

FORESTRY ADMINISTRATIVE ORDER NO. 18–1

November 10, 1958

AMENDMENT TO FORESTRY ADMINISTRATIVE ORDER NO. 18 KNOWN AS COLLECTION OF FEES FOR CERTAIN SERVICES OF THE BUREAU OF FORESTRY NOT SPECIFICALLY PROVIDED FOR IN FORESTRY LAWS.

1. A new paragraph (*d*) is hereby added after paragraph (*c*) of Forestry Administrative Order No. 18, dated May 8, 1951, known as the "Collection of Fees for Certain Services of the Bureau of Forestry not Specifically Provided for in Forestry Laws", to read as follows:

"(*d*) For each certification issued at the request of any person or entity regarding payment of reforestation fee.... ₱1.00"

2. *Date of Taking Effect.*—This Order shall take effect immediately.

JOSE M. TRINIDAD
Acting Secretary of Agriculture and Natural Resources

Recommended by:

FELIPE R. AMOS
Director of Forestry

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH BEFORE THE PHILIPPINE CENTER OF INTERNATIONAL PEN CONFERENCE, AT PINES HOTEL, BAGUIO, ON DECEMBER 27, 1958

LADIES AND GENTLEMEN:

I AM highly honored by your invitation to address this brilliant group of Filipino writers who are meeting today in this mountain city. A more suitable site for your conference could not have been chosen, for here in this romantic spot, with its enchanting scenery and its invigorating climate, one can hardly resist the urge to be in an expansive mood and to give expression to the emotions that surge in one's being. It is the kind of atmosphere that would tempt a poet to strike his lyre.

The theme of your conference warms my heart because it evinces a desire on your part not to be mere passive onlookers but to be active participants in the building of our national structure, and the statement of your objective shows that you are alive to the forces that operate in our contemporary society. I am, therefore, confident that this conference will prove stimulating and, therefore, helpful and beneficial not only to yourselves but also for our country.

I am happy to note the rise in our country of a generation of writers in English, the *lingua franca* of the world of these times. It is as yet not a big group, it is true, but considering the size of our population and the fact that English has been with us for only about half a century, this accomplishment of our people may be considered as noteworthy. It is a tribute to the literary genius of your young writers that some of their works have gained recognition in the United States and in the English-speaking world. I suggest that they continue to develop their art and thus add luster to our country's name. It is my considered view, in which I am certain the forward-looking statesmen and realistic thinkers of Filipinos agree, that if we must elevate our international position, prestige, and influence in a world that has in fact adopted English as the *lingua franca* and if we must keep abreast with the wings of cultural and material progress, our writing in English should be given positive encouragement. I am convinced that meetings like this one will provide the incentive for this development.

I, therefore, congratulate you heartily on the bright idea of holding this conference at this time so that you can discuss your common problems and receive mutual inspiration from your association with your peers and comrades.

It is also heartening to see that among those attending this conference are writers in the leading vernaculars in

the country, for in our desire to push forward culturally, we must not be guilty of neglecting what is our own. We need to encourage our vernacular writers in order to keep our native languages alive and growing. It would be tragic, if not sheer folly on our part, if we are to allow our vernaculars and especially the national language to perish for want of encouragement. After all, the national soul can truly express its deepest sentiments and emotions, its most beautiful conceptions in art and culture and its deathless thoughts only through the vehicle of its authoctonous language. I mean here the people as a whole. I do not mean that individual Filipino writers cannot express their most patrtiotic thoughts in a foreign language.

Because it is a historical fact that Rizal's immortal masterpieces, even his dying testament, the last farewell, were written in Spanish; Palma, who wrote the lyrics of our national anthem, did it in Spanish; Quezon's and Osmeña's orations were in both Spanish and English, and the constellation of Filipino writers who fought for our freedom and independence in the 19th and 20th centuries wrote in Spanish and/or English and yet they all expressed the national soul.

But it is also another historical fact that all these great writers and orators, when appealing to the masses of our people, had to use the vernacular. If I may be allowed to cite a personal case, I can vouch that my humble poetic contributions to Philippine literature were all in the vernacular. If they were written in English, I doubt if the popular response in the Visayan-speaking region that they got could be as warm, as deep, and as lasting.

In this connection, let me say a few things about our national language. We should never overlook the fact that in the development of languages they borrow from one another; the English and Spanish and French and Italian from Latin. The Latin from the Greek and Sanskrit and so on down the line.

The Castillian tongue merged with the Basque, the Catalan, the Sevillan, and other vernaculars in Spain to become the Spanish language. The English had the same development consolidated out of the vernacular of the Saxons, Angles, Welsh, Scotch, Irish, etc. The technical terms in art and science are mostly coined out of Greek or Latin deviations. If the inter-borrowing of words by modern languages is freely indulged in, why should our national language develop differently? We have a vast number of vernaculars like the Tagalog, Visayan, Ilocano, Bicolano, Hiligaynon, to name a few. Could all these not be welded into a rich and beautiful national language further enriching it with the coinage of words for science and art? I endorse these ideas to this conference of writers.

There is hardly any doubt that writers the world over can contribute and have contributed in the past to the

growth and development of their respective countries. The pages of history are replete with instances of this significant fact. In every country, the beautiful thoughts and lofty ideals that have been recorded through the ages on stone, papyrus, parchment, or paper have served as rich nourishment for the minds of the people who read them. In fact, men and women of letters play the role of silent mentors, shaping the thinking and attitudes of those who read their writings. If education is the foundation of every State, as an ancient sage once said, then the writers who provide the materials of education must receive high credit for their part in laying that foundation.

Moreover, popular movements that have led to far-reaching changes and upheavals in the social and political situation of different countries have been linked with the activities of literary men and women. I do not mean by this statement that it was the writers that caused those movements. Rather, it would be more accurate to say that it was through the pens of these literary men and women that the grievances, fears, hopes, and longings of the people were made articulate. In some instances, the emotions were aroused to such a high pitch that by degrees an irresistible force developed like heat in the bossom of the mountain which finally went off in a terrific explosion.

Who does not recall the part that Voltaire and Rousseau played in fanning the popular discontent of the French people which finally led to that social cataclysm recorded in history as the French Revolution? Living at a time when the middle classes and the peasantry of France were groaning under the tyranny and oppression of the feudal aristocracy, these two men of letters became the powerful spokesmen of the people who were seeking enfranchisement from virtual economic bondage. Voltaire, with his pungent criticism of the existing economic and political order, and Rousseau, with his bitter censure of the social inequality of mankind as elaborated in his theory of the social contract, brought the passions of the populace to a white heat that eventually burst into a conflagration which shook the feudalistic system to its very foundation. No one realized this fact more fully than Louis XVI himself, who, upon seeing the books of Rousseau and Voltaire in the prison of Temple fortress where he had been incarcerated, remarked that those two men had destroyed France, meaning of course the Bourbon Dynasty.

Similarly, the writers of the colonial period in the United States did much to galvanize the sentiments of the colonists in favor of separation from England as a result of which the war of the revolution broke out and finally ended in the independence of the thirteen colonies in 1776. Later, another writer, Harriet Beecher Howe, by writing Uncle Tom's Cabin voiced the aversion of many people to the inhumanity of the institution of slavery, thus paving the

way for the emancipation of the American Negro by the immortal Abraham Lincoln. It can, therefore, be said with much truth that she helped greatly the cause of personal freedom in the United States. In England the trend towards more democracy and greater interest in social welfare during the eighteenth and nineteenth centuries were reflected in the works of such writers as Paine, Gray, Burns, and Carlyle to mention only the most prominent.

Thomas Paine pointed out the need of creating peasant proprietorship, of paying old age pensions, and of spending liberally for the education of the children. Thomas Gray sang of the short and simple annals of the poor and Robert Burns minimized the significance of rank, wealth, or blood and stressed the importance of individual worth. Thomas Carlyle glorified the honest worker and denounced the industrial revolution which he believed was responsible for the sufferings of the laboring class.

Coming now to our own country, we recall how the writers of the different periods of our history have contributed to the building of our nation when our country was fighting for reforms. During the Spanish regime we had a group of writers working in Spain led by such famous men as Marcelo del Pilar, Graciano Lopez Jaena, and Dr. Jose Rizal, who not only pictured before the Spanish authorities and the Spanish people the deplorable conditions then obtaining in our country but also worked for the institution of reforms. And that is not all they did, for they also aroused the patriotic sentiments of the Filipinos and made them conscious of their common ideals, hopes, and aspirations. In other words, they united the Filipino people in a common cause, namely, the amelioration of conditions in their native country.

During the American administration, the longings of the Filipino people for political independence, for a desire to determine their own destiny, found able champions in such writers as Sergio Osmeña, Rafael Palma, Teodoro Kalaw, and the dynamic leader, the late President Manuel L. Quezon. These leaders presented our case before the American people so vigorously that the American Congress saw the justice of our cause and passed first the Jones Law and later the Tydings–Mcduffie Independence Act which definitely granted the Philippines her independence after a transition period of ten years. And so, on July 4, 1946, the Philippine Republic was born. We have been enjoying our independence for more than twelve years but the fight is not over. For while we have won our political freedom, yet we can hardly say that we are now economically free. Therefore, we must now bend our efforts toward this new objective of full economic freedom without which political freedom would be empty. And so, just as our writers in the past have used their energy and

talents in the effort to secure our political independence, I now charge our present day writers to apply their energies to the new problem before our people—that of securing our economic security, stability, and independence.

Lastly, I would ask you to delve into our culture and glorify it. There is no dearth of subjects to write about the blending of three main cultural streams—the Malay, the Latin, and the Anglo-Saxon. Right here our country provides an ineshaustible well-spring for our writers to draw upon. We have our folkways, our legends, and our epic poems which have been handed down by word of mouth from father to son. These must be recorded if we wish to preserve them for all time.

Ladies and Gentlemen: As wielders of the pen, you have the signal opportunity as well as the grave responsibility to help in the unending task of nation building. This is a difficult task and needs the undivided support and the wholehearted cooperation of all our citizens in order to endure. This edifice must rest on a strong and solid foundation but certain dark forces, if not overcome, may weaken this foundation; namely, cupidity, selfishness, inordinate ambition, dishonesty on one hand, and defeatism, negative thinking, and Godless materialism on the other. If the pen is mightier than the sword, as Bulwer Lytton once said, then I urge you to use the power that is yours to fight and crush those forces of evil in order that we may insure the security of our Republic, the performance of our democratic institutions, and the welfare and prosperity of our people. To me, the writers' slogan should be "Keep and Develop English and Spanish for our International Front and the National Language for our National Front."

DECISIONS OF THE SUPREME COURT

[L-10872. February 28, 1958]

JOSE DOMINGDING and DAVID ARAÑAS, plaintiffs and appellants, *vs.* TRINIDAD NG and CHEE NG, defendants and appellees.

DAMAGES; MORAL DAMAGES; DETERMINATION OF AMOUNT; ELEMENTS TO BE CONSIDERED.—The social and financial standing of the offender and the offended party are additional elements which should be taken into account in the determination of the amount of moral damages. While it is true that social dignity does not depend upon the wealth or poverty of a person the amount necessary to repair the damages thereto depends upon her own social and financial means. The financial standing and means of the offender is also a convenient gauge for the determination of the amount necessary to repair the injury caused.

APPEAL from a judgment of the Court of First Instance of Manila. Narvasa, *J.*

The facts are stated in the opinion of the Court.

Augusto Revilla for plaintiffs and appellants.

José G. Gatchalián and *B. L. Padilla* for defendants and appellees.

LABRADOR, *J.:*

Appeal from a judgment of the Court of First Instance of Manila certified to this Court by the Court of Appeals for the reason that the amount involved is beyond the latter court's jurisdiction.

On May 25, 1953, Trinidad Ng purchased from plaintiffs some 150 baskets (*kaings*) of mangoes for export to Japan. Plaintiffs claim that actually 400 baskets were purchased, but defendants allege that there were only 150, and that these were shipped to Hongkong on the same day as evidenced by bill of lading Exhibit "1". Although an invoice presented by plaintiffs states that the amount delivered is 400 *kaings* (Exhibit "B"), the invoice, however, does not contain the signature of the purchaser.

The evidence shows that on the evening of that same day, May 25, 1953, Trinidad Ng went again to the place of business of the plaintiffs, looking for her brother-in-law. Plaintiff David Arañas was present at the bodega and having informed Trinidad Ng that her brother-in-law was not in the place, offered to accompany her home in a taxi. Trinidad Ng accepted the invitation, having known Arañas for the past 10 years. So Arañas called a "Golden" taxi at the corner of M. de Santos and Elcano Streets, San Nicolas and both of them embarked therein.

Arañas ordered the driver to proceed to Luneta, but Trinidad objected, telling the driver to bring her direct

to Tennessee, her home, and not to the Luneta. At that instant, Arañas immediately embraced her and after embracing her subjected her to indignities described by Trinidad Ng thus:

"He kissed me and trying to push my panty and held my private parts, and when I was trying to struggle against him I hit him. He embraced my back and kissed me on the neck and also on the breast. When I was fighting with him there in the taxi and at the time when he was able to free my hands I shouted to the driver to stop the taxi. But the taxi did not stop actually but it ran very slowly, and I was able to open the door and jumped out." (p. 6, Transcript of the Testimony for the Defense.)

When the taxi reached the corner of San Fernando and Elcano Streets, Trinidad was able to jump out of the taxi, which had slackened speed. She took a "liberty" taxi and in it drove home, crying. She informed her husband about the incident and her husband decided that a complaint be filed by her the following day in the Office of the City Fiscal. This was not done, however, but three days later.

The complaint was for acts of lasciviousness, but the complaint could not be investigated promptly and on September 28, 1953, the case was dropped.

The present action was brought by Jose Domingding, owner of the mango store and plaintiff Arañas, his manager, to recover from Trinidad Ng and her husband the value of 400 baskets of mangoes claimed to have been delivered on May 25, 1953. Allegation is made in the complaint that the purchasers had agreed to pay the following day but that they failed to do so. In answer defendants allege that only 150 baskets were taken and that these were to be paid for, according to the understanding between the parties, when the price of the mangoes exported had been collected. Defendants also put up a counterclaim against David Arañas for the amount of ₱50,000 as moral damages for the indecent indignities to which Trinidad Ng was subjected by plaintiff Arañas, for ₱10,000 as exemplary damages, and for ₱1,000 as attorney's fees. In the judgment rendered, defendants were sentenced to pay the value of 150 baskets of mangoes on plaintiffs' complaint; but, on the other hand, plaintiff Arañas was sentenced to pay to defendant the sum of ₱50,000 as moral damages, and the further sum of ₱1,000 as attorney's fees. The owner of the store, Jose Domingding withdrew his appeal, so the present case concerns David Arañas alone.

The law provides that moral damages are to be fixed in the discretion of the judge. Unfortunately, the decision appealed from states no reasons or facts or circumstances why the moral damages had been fixed at ₱50,000. As the trial judge had opportunity to examine the parties, both offender and offended, it would have been easy for

him to have specified such circumstances, such as the bearing, manners, personality, education, and so forth, of the parties—all of which it should have considered in assessing the moral damages of ₱50,000. But it failed to do so, and this Court feels it difficult to fix the amount of moral damages that should be paid. From the record, however, we vote that the offended party is a married woman, a business woman, and so is the offender; the occasion was during nighttime, so the indignities suffered by the offended party could not have been witnessed by many people; the assault on the person's dignity did not last because before covering Elcano Street, where the parties embarked, the offended party was able to get out of the taxi and saved from the indignities being made by the offender; and the only persons that learned of the assault were the two taxi drivers, the offended party's husband and the offender.

In cases like the present, the social and financial standing of the offender and the offended party are additional elements which should be taken into account in the determination of the amount of moral damages. While it is true that social dignity does not depend upon the wealth or poverty of a person, the amount necessary to repair the damage thereto depends upon her own social and financial means. The financial standing and means of the offender is also a convenient gauge for the determination of the amount necessary to repair the injury caused.

"It is clear that because of the fraud perpetrated upon her by the appellee she suffered mental anguish, besmirched reputation, wounded feelings, moral shock and social humiliation, which are the elements upon which recovery for moral damages may be obtained. Article 2217 new Civil Code. There is also enough reason to impose exemplary or corrective damages. Appellant Rustico Victorino is, as already stated, entitled to moral damages, and appellee's act was wanton, fraudulent and oppressive. These elements, therefore, necessary for the imposition of this kind of damages are present in the instant case. In assessing, however, the amount of these damages *the financial standing of the defendant, as disclosed by the evidence, must be considered.* 11 C. J. S. 807." (Victorino, et al. *vs.* Nora, C. A., 52 O. G. [2] 911.) (Italics supplied.)

"* * * While the fundamental rule of the law is to award compensation, yet rules for ascertaining the amount of compensation to be awarded are formed with reference to the just rights of both parties, and the standard fixed for estimating damages ought to be determined, *not only what might be right for plaintiff to receive in order to afford just compensation, but also by what is just to compel defendant to pay.*" (25 C. J. S. 560–561.) (Italics supplied.)

"It is true that petitioner is a mere laborer, while the plaintiff in the Acro Taxicab case was a general utility man, but this difference in their position or earning capacity cannot be considered of significance for the reason that *in the determination of moral damages the human value and the dignity of man are of paramount consideration.* * * *." (Layda *vs.* Hon. Court of Appeals, et al., G. R. No. L–4487, Jan. 29, 1952.) (Italics supplied.)

From the record we also understand that the offended party is an exporter of mangoes who, evidently, does not seem to have much capital because she only pays for the mangoes when the same is sold. Neither does the offender seem or appear to be of much financial consequence because he was only the overseer or manager of a mango store.

With all the above circumstances in mind, the Tribunal believes that the sum of ₱50,000, assessed by the court *a quo*, is excessive. ₱1,000 should be sufficient as moral damages, but the offender should be required to pay punitive damages in the amount of ₱2,000 because of his act in abusing the confidence of a customer belonging to the weaker sex, which bespeaks of a perverse nature dangerous to the community.

Insofar as the attorney's fees are concerned, the amount fixed seems to be reasonable.

Wherefore, the decision appealed from is hereby modified and the defendants are allowed to recover on their counterclaim against David Arañas the sum of ₱1,000 as moral damages, the sum of ₱2,000 as punitive damages and ₱1,000 as attorney's fees.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.*, concur.

Judgment modified.

[No. L-10071. October 31, 1957]

TESTATE ESTATE OF GUILLERMO PUATU Y CONSTANTINO, deceased. ROSARIO CAMPOS FERNÁNDEZ, petitioner, *vs.* DR. SANTIAGO T. PUATU, VICTORIA T. PUATU, MARIANO T. PUATU, ROSALÍA T. PUATU CRUZ, DR. LUZ T. PUATU *en* ORTENCIO, ALEJANDRO T. PUATU, GUILLERMO T. PUATU JR. ATTY. NICOLÁS T. PUATU, EMERITA T. PUATU, HERMÓGENES T. PUATU, AURORA T. PUATU, ISABEL G. PUATU, SOLEDAD G. PUATU, GUILLERMA G. PUATU, EUGENIA G. PUATU, ROSALINDA G. PUATU, and FELIZARDA G. PUATU, as the acknowledged natural children of the deceased, Guillermo Puatu y Constantino and as his forced heirs, oppositors and appellants.

1. APPEAL AND ERROR; WEIGHT OF FINDINGS OF FACT; GENERAL RULE NOT APPLICABLE TO DEPOSITIONS.—Generally, the findings of fact made in an appealed decision are entitled to great weight, for the lower court has seen and heard the witnesses during the trial, whereas the appellate court has no opportunity to observe their behavior on the witness stand. *Held:* That, this rule does not apply where His Honor the trial Judge had no such opportunity as regards witnesses who testified through depositions taken in a foreign country.

2. MARRIAGE; PRESUMPTION WHEN DOES NOT APPLY.—Where it appears that the woman who claimed to have had correspondence with her alleged husband, now deceased, could not produce a single communication of the latter; that when she returned to Spain the deceased did not support her and she did not demand support from him; that the purported marriage contract was allegedly lost; that the church records were destroyed; that no entry relative to said alleged marriage exists either in the Civil Registry of Madrid, or in records of the diocese to which the church where the marriage was solemnized belongs; that no priest by the name of Alfonso García, who allegedly solemnized the marriage, appears in the records of the Bishopric of Madrid; and the alleged wife was registered as single in the Spanish Consulate in the Philippines, and the deceased, who was regarded as a bachelor, had lived separately from her, not only in a different house, but, also, thousands of miles away from her, for thirty-five (35) years. *Held:* The presumption that persons who had lived as husband and wife entered into a lawful contract of marriage, pursuant to section 69 (*bb*) of Rule 123 of the Rules of Court, is deemed offset.

APPEAL from an order of the Court of First Instance of Manila. San José, *J.*

The facts are stated in the opinion of the Court.

Nicanor S. Sison for petitioner and appellee.

Antonio Enrile Intón and *Nicolás T. Puatu* for oppositors and appellants.

CONCEPCIÓN, *J.:*

This is an appeal from an order of the Court of First Instance of Manila declaring that appellee Rosario Campos Fernández is the widow of Guillermo Puatu y Constantino.

Alfonso Puatu, represented by Atty. Arsenio B. Cruz, instituted this case on June 15, 1953. In the petition filed thereafter, it was alleged that Guillermo Puatu y Constantino had died in Manila, on June 1, 1953; that the deceased was single, of age, Filipino and resident of Manila; that his only heirs are his nephews, namely, Alfonso (the petitioner), Emiliana and Mateo, all surnamed Puatu, and Pedro, Natividad, Gregorio and Flordeliza, all surnamed Atienza y Puatu; that the deceased had some properties, but no debts; and that he died intestate. Petitioner prayed that Mateo Puatu be appointed administrator of the estate of the deceased.

An urgent motion to dismiss, dated September 19, 1953, with alternative motion to revoke the letters of administration issued to said Mateo Puatu, was filed by Santiago, Victoria, Mariano, Rosario, Luz, Alejandro, Guillermo, Jr., Nicolás, Emeteria, Hermógenes, Aurora, Soledad, Isabel, Guillermo, Eugenia, Rosalinda and Felizarda, all surnamed Puatu. The motion alleged that said petitioners are the acknowledged natural children of the deceased, with whom they had lived continuously, from their birth up to the time of his death; that they are his sole heirs; that Alfonso Puatu did not mention their names in his petition, dated June 15, 1953, in order to give the impression that he had a right to institute the proceedings and to avoid service of notice upon the movants; and that there is no need of said proceedings for the settlement of the estate of the deceased, inasmuch as they had paid the only obligation left by the latter upon his death, and they are all in agreement as to the partition of his estate, which they had been administering ever since his last illness. Accordingly, the movants prayed that the proceedings be dismissed and the letters of administration issued to Mateo revoked, or, else, that said letters of administration be revoked, and Alejandro Puatu be appointed, in lieu of Mateo Puatu, as administrator of the estate of the deceased.

One month later, or on October 19, 1953, said movants—hereinafter referred to as children of the decedent—filed a notice of discovery and petition for probate of a will, stating that, after the filing of their motion of September 19, 1953, they had found a copy of the last will and testament executed by the decedent on November 12, 1944, bearing a stamp of the Court of First Instance of Manila, showing that the original of said document had been filed with said court, on November 16, 1944, for safekeeping, and praying that said will be admitted to probate and letters of administration issued to Alejandro T. Puatu, one of the acknowledged natural children of the deceased. The latter's aforementioned nephews, Mateo, Emiliana and Alfonso, all surnamd Puatu—then represented by Atty. Nicanor S. Sison, who had, meanwhile, substituted Atty.

Cruz—objected thereto, upon the ground that the instrument presented for probate is not authentic; that it is not the original will; that it is written in a language (English) not known to the deceased; and that it had not been executed conformably to law. Soon, thereafter, Atty. Sison filed a similar opposition to the probate of said instrument, on behalf of Rosario Campos Fernandez, who claimed to have been married to the deceased in Spain on May 15, 1896.

After due hearing, the court, by an order dated August 20, 1954, allowed the aforementioned instrument to probate as the last will and testament of Guillermo Puatu y Constantino, appointed his son, Alejandro T. Puatu, as administrator of the estate of the decedent, revoked the letters of administration issued to Mateo Puatu, and ordered him to turn over said estate to Alejandro T. Puatu. Said nephews of the deceased announced their intention to appeal from this order, but, thereafter, they withdrew their notice of appeal, and stated that they accepted said order of August 20, 1954, and had no interest in the properties of the deceased. Thus, said order became final and executory.

As Rosario Campos Fernández later urged the court to settle her civil status, evidence was taken thereon and subsequently an order was issued on October 5, 1955, holding that she is the lawful surviving spouse of the deceased. A reconsideration of this order, as well as a new trial, were, thereafter, denied, whereupon the children of the deceased perfected their appeal. Our jurisdiction over the same is due to the fact that the estate of the decedent is worth more than ₱50,000.

The record shows that, during his lifetime, Guillermo Puatu y Constantino lived maritally, first in Plaridel, and then in Baliuag, Bulacán, with Nemesia Talastas—now deceased—who begot him the following children, whose ages, in October, 1953, are given after their respective names:

1.	Dr. Santiago T. Puatu	41 years
2.	Victoria T. Puatu	38 years
3.	Mariano T. Puatu	36 years
4.	Rosario T. Puatu-Cruz	34 years
5.	Dra. Luz T. Puatu-Ortencio	32 years
6.	Alejandro T. Puatu	28 years
7.	Guillermo T. Puatu, Jr.	26 years
8.	Atty, Nicolas T. Puatu	24 years
9.	Emeteria T. Puatu	22 years
10.	Hermogenes T. Puatu	19 years
11.	Aurora T. Puatu	17 years

Several years after the commencement of said relations with Nemesia Talastás, Guillermo maintained a house in Manila, where he stayed—whenever in the city—with Soledad Gador, who begot him the following children, whose

ages, in October, 1953, are stated after their respective names:

1. Soledad G. Puatu ..... 14 years
2. Isabel G. Puatu ..... 13 years
3. Guillermo G. Puatu ..... 9 years
4. Eugenia G. Puatu ..... 6 years
5. Rosalinda G. Puatu ..... 4 years
6. Felizarda G. Puatu ..... 3 years

These seventeen (17) children bore his surname and were always supported by him. Since their respective births, they lived with him and enjoyed the status of acknowledged natural children. In fact, he acknowledged them as such in public instruments and they have been judicially declared by final judgment as having said status. The only question for determination in this appeal is whether appellee Rosario Campos Fernández has ever been married to the deceased, Guillermo Puatu y Constantino.

In support of the affirmative answer, said appellee introduced evidence to the effect that Guillermo Puatu y Constantino was in Spain, in 1896; that appellee, a Spanish subject, was then during "las labores de casa" in his residence in Madrid, Spain; that Guillermo and she contracted marriage, on May 15, 1896, before a catholic priest, by the name of Alfonso García, in the parish church of "Nuestra Señora del Pilar," in said city; that the sponsors to the wedding were Antonio Puso, his wife, Manuela Ferrer, and Dr. and Mrs. Dominador Gómez; that there were other persons present at the wedding, including Juan Pedru, Juan Llusia and María Bernat; that, immediately thereafter, the couple lived publicly as husband and wife in Spain, up to the year 1902, when they came to the Philippines and continued their marital life in Manila, and, later on, in Balíuag, Bulacán; that, in 1917, after discovering that he was unfaithful to her, she returned to Spain, where she remained continuously thereafter, that she never returned to the Philippines; and that they never had any offspring.

The main evidence for the appellee consisted of her own deposition, taken in Spain. By way of corroboration, as regards the wedding and the marital life of Guillermo Puatu and appellee in Spain, she introduced, also, the testimony of Juan Pedru and Juan Lluisa, similarly taken in that State. With respect to their marital relations in the Philippines, the corroborative evidence consists of the testimony of Simeón Constantino and that of the nephews of the decedent, Emiliana Puatu and Mateo Puatu.

The lower court held that appellee is the surviving spouse of the deceased, because they had publicly lived together as husband and wife in Spain and then in the Philippines for about twenty-one (21) years; because they are presumed, therefore, to "have entered into a lawful contract

of marriage", pursuant to Rule 123, section 69(*bb*), of the Rules of Court; and because this presumption is bolstered up by the aforementioned testimony of the appellee, corroborated by that of Juan Pedru and Juan Llusia.

Generally, the findings of fact made in an appealed decision are entitled to great weight, for the lower court has seen and heard the witnesses during the trial, whereas the appellate court has no opportunity to observe their behaviour on the witness stand. However, in the case at bar, His Honor the trial Judge had no such opportunity, as regards the witnesses mentioned in the preceding paragraph, their depositions having been taken in Spain. Besides, two (2) of the three (3) witnesses who testified in the Philippines—Emiliana Puatu and Mateo Puatu—belong to the group of nephews whose interest is adverse to that of appellants herein. In fact, Mateo Puatu, was the former administrator removed upon appellants' petition and the probate—likewise, at their instance—of the will of the decedent.

Again, the following circumstances affect adversely the credibility and weight of appellee's evidence, namely:

1. Although appellee claims to have had some correspondence with the deceased, she could not produce a single communication of the latter. Her only explanation, to the effect that "no tiene costumbre de guardar correspondencia," and that "no puede exhibir correspondencia por no tenerla," is far from satisfactory.

2. According to her own testimony, ever since she returned to Spain, in 1917, the deceased did not support her. What is more, she never asked or demanded any support from him. Although she would have us believe that, once in a while, she received money from him, through an acquaintance coming from the Philippines, there is no documentary evidence whatsoever in support of this or any other part of her testimony. Thus, there is absolutely no evidence, deserving full faith and credence, bearing out said testimony. On the contrary, there are records of unimpeachable character pointing in the opposite direction. Thus, for instance—

3. Appellee explained her failure to produce the marriage contract with the deceased by saying that the document was lost during the Spanish civil war, and that, likewise, the records of the church of "Nuestra Señora del Pilar" in Madrid were then destroyed. However, no entry relative to said marriage appears either in the civil registry of Madrid [1] or in the records of the diocese to

[1] The municipal judge and officer in charge of the civil registry for the district of Buenavista, Madrid, certified, on July 8, 1955:

"Que, examinados los libros índices de la Sección II de este Registro civil de mi cargo correspondientes al día quince de Mayo de mil ochocientos noventa y seis, *no se halla en ellos*

which said church belongs.[2] What is more—according to a certification attached to appellants' motion for reconsideration and new trial—no priest by the name of Alfonso García—who, allegedly, solemnized the marriage—appears in the records of the Bishopric of Madrid.[3]

Upon the other hand, there are records to the effect that the appellee was considered single in the Philippines, and that the decedent claimed to be a bachelor and was regarded as such. For instance—

a. In the records of the Spanish Consulate in Manila, the following entry appears:

"En Matrícula No. 121, folio 161, año 1916, Doña ROSARIO CAMPOS FERNÁNDEZ, natural de la Rubia, provincia de Granada, (España), *soltera*, nacida en el año 1871, llegó a Filipinas en el año 1902, y su fecha de inscripción en este Consulado, fué el 27 de Abril de 1916." (Exhibit 13–A; italics ours.)

It is true that appellee does not appear to have given the foregoing data. The same, however, were furnished personally by Ramón Abril Llullas, *who signed on her behalf*. Hence, she presumably authorized him to do so. At any rate, said records of the Spanish Consulate in the Philippines are public official records, which are over forty (40) years old. As such, they are prima facie evidence of the facts therein stated. (Rule 123, sections 35, 38 and 39, Rules of Court.)

b. The petition of Alfonso Puatu, with which this proceedings was commenced, states that the decedent was, at the time of his death, "single", and Alfonso Puatu so

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ninguna inscripción de matrimonio referente a Don Guillermo Puatu Constantino con Doña Rosario Campos Fernández; aunque en la mencionada fecha la parroquia del Pilar pertenecía a la demarcación de este distrito ya que *hay inscritas en los libros de Matrimonios de este Registro civil por esa fecha enlaces matrimoniales celebrados en la mencionada parroquia.*" (Exhibit 16–B; italics ours.)

[2] Similarly, the officer in charge of the records of the diocese of Madrid-Alcalá, certified, on August 1, 1955;

"Que, examinados los índices de los libros de matrimonio de este archivo *no se halla inscrito en ellos el expediente matrimonial referente a D. Guillermo Puatu Constantino con Doña Rosario Campos Fernández en el año mil ochocientos noventa y seis.* Asimismo *no se halla el mencionado expediente en los legales de los expedientes matrimoniales instruidos en la Parroquia de Ntra. Sra. Del Pilar de esta capital,* dado que de este Obispado de Madrid-Alcalá dependen *todas* las Parroquias de esta Capital y por consiguiente *sus respectivos archivos se encuentran dentro de su jurisdicción ecleciástica.*" (Exhibit 17–B; italics ours.)

[3] The Chancellor-Secretary of the Bishopric of Madrid, certified, on October 17, 1955:

"Que, registrados los libros de licencias sacerdotales que se conservan en este obispado *desde el año de 1896, no aparece el nombre de* ningun sacerdote llamado D. Alfonso García, * * *" (Annex D, Record on Appeal, p. 346; italics ours.)

testified at the hearing of said petition—before the appellants' intervention in this case.

c. Original certificates of title Nos. 12968, 15309 and 14758 of the office of the register of deeds of Bulacán (Exhibits 10, 11 and 14), were issued in favor of "Guillermo Puatu, *single*, of Balíuag, province of Bulacán, P. I.", on August 18, September 17 and September 8, 1930, respectively.

d. The same status is given in a deed of lease, executed by Guillermo Puatu in favor of Felipe Bernardino, in November 13, 1946 (Exhibit 5).

e. To the same effect is the death certificate of the decedent (Exhibit B).

f. In the public instruments, Exhibits X and Y (marked, also, as Exhibits 8 and 9) dated, respectively, November 12, 1944 and May 20, 1948, whereby the decedent acknowledged appellants herein as his natural children, he stated that his status was "single."

g. This status was confirmed by the decision in Civil Case No. 25519 of the Court of First Instance of Manila, dated February 6, 1954, approving said acknowledgment of appellants herein as the natural children of Guillermo Puatu, which decision is already final and executory.[4]

h. In his last will and testament (Exhibit 7)—which has already been allowed to probate—the deceased described appellants herein as his acknowledged natural children and named them as his heirs.

In the light of these facts, and of the circumstance that, admittedly, the appellee and the decedent had, since 1927, lived separately from each other—not only in different houses, but thousands of miles away from each other—for thirty five (35) years, the least we can say is that the presumption of marriage, relied upon in the decision appealed from, has been sufficiently offset. Indeed, some members of the Court are inclined to believe that the preponderance of the evidence militates in favor of appellants herein. Considering, however, that the certification by the Bishopric of Madrid–Alcalá, relative to the non-existence of a Father Alfonso García, and the decision approving the acknowledgment of appellants herein as natural children of the deceased, are not, as yet, part of the evidence in connection with the incident under consid-

[4] Said decision was not introduced in evidence at the hearing of the incident under consideration. Copy thereof had been attached to appellants' motion for new trial, which was denied. It appears, however, that copy of said decision had already been presented in evidence in this proceedings, in connection with another incident therein, presumably the probate of the will. At any rate, it is not disputed that appellants are children of the deceased, that the latter had acknowledged them as his natural children and that this act has merited judicial approval.

eration—said documents being those relied upon in support of his motion for new trial, which was denied by the lower court—and in order to avoid any possible injustice to the parties herein, resulting, either from the application of technical legal rules, or from the handicaps under which they may find themselves, owing to the problems of distance and time they have to overcome, and to other factors having analogous effects, this Court believes that it would be best to remand the records to the lower court for a new trial and the reception, not only of the evidence aforementioned, but, also, of such other evidence as may be pertinent, relevant and material to the issue under consideration.

WHEREFORE, the order appealed from is hereby set aside, and the records remanded to the lower court for new trial, with costs against the appellee.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and *Félix, JJ.,* concur.

Order set aside.

[No. L-10206. April 16, 1958]

THE PHILIPPINE CONSOLIDATED FREIGHT LINES, INC., plaintiff and appellant, *vs.* EMILIANO AJON and JOSE MANDANAS, defendants and appellees.

[No. L-10207. April 16, 1958]

THE PHILIPPINE CONSOLIDATED FREIGHT LINES, INC., plaintiff and appellant, *vs.* AGRIPINA NAVARRO, defendant and appellee.

[No. L-10208. April 16, 1958]

THE PHILIPPINE CONSOLIDATED FREIGHT LINES INC., plaintiff and appellant, *vs.* MATILDE PADERNAL, defendant and appellee.

POSSESSION; RIGHT OF POSSESSION OF PREMISES BETWEEN SUBLESSEE AND LESSEE.—Possessors of a building and of the land on which it stands based on a right devised from a mere sublessor, can invoke no right of possession superior to that of the sublessor (Sipin *vs.* Court, 74 Phil. 649; Madrigal *vs.* Ang Sam To, 46 Off. Gaz. 2173), who in turn derives his right to possess from his lessor. Mere sublessees can have no right to the premises better than the original lessee and owner of the building standing thereon.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Yuseco, Abdón, Yuseco and Narvasa for the plaintiff and appellant.

Carlos J. Parás for defendants and appellees Emiliano Ajon and José Mandanas.

E. B. García Law Offices for defendant and appellee Agripina Navarro.

San Juan, Africa, Yñiguez and Benedicto for defendant and appellee Matilde Padernal.

Acting Solicitor General Guillermo E. Torres and *Solicitor Melitón G. Solimán* for the third-party defendant and appellee Director of Lands.

REYES, J. B. L., *J.:*

These are three cases originally filed in the Municipal Court of Manila by the same plaintiff, the Philippine Consolidated Freight Lines, Inc., against defendants Emiliano Ajon and Jose Mandanas; Agripina Navarro; and Matilde Padernal, to eject them from a building constructed by said plaintiff on Lot No. 79 of the San Laazro Estate belonging to the Republic of the Philippines. Defendants answered asking for the dismissal of the complaints and bringing in the Director of Lands, in his capacity as administrator of the San Lazaro Estate, as third-party defendant. The cases were then jointly heard by the inferior court and thereafter, judgment was rendered dismissing the complaints for ejectment as well as the

third-party complaints against the Director of Lands. Plaintiff appealed to the Court of First Instance of Manila, there the three cases were again consolidated and submitted for decision on a stipulation of facts and the documentary evidence of the parties, after which the complaints were again ordered dismissed by the trial court. Having failed to obtain reconsideration of the order of dismissal, plaintiff appealed directly to this Court on questions of law.

The facts, as may be gathered from the stipulation of facts and the documentary evidence of the parties, may be summarized as follows:

Lot No. 79 forms part of the San Lazaro Estate in the City of Manila, owned by the government and under the administration, supervision, control, and disposition of the Bureau of Lands. On or about March 10, 1945, plaintiff-appellant, without obtaining previous authority from the Director of Lands, occupied said lot and built thereon a garage, which it leased to one Zacarias de Guzman, who in turn subleased the premises to the defendants-appellees. However, as occupant of Lot No. 79, plaintiff-appellant paid to the Director of Lands "occupation fees" totalling ₱2,332.50.

Subsequently, the Committee on Appraisal of the Department of Agriculture and Natural Resources made an assessment of the value of Lot No. 79 at ₱300 per square meter and the annual rental payable thereon, at 5 per cent of its value. Plaintiff objected to said assessment of the land, which was denied by the Bureau of Lands. Thus, as of December 31, 1953, the amount of occupation fees claimed by the Bureau of Lands from plaintiff had reached the amount of ₱218,510.70, after deducting what had already been paid by it to the Bureau as occupation fees at the old rate. Because of plaintiff's failure to pay the occupation fees under the new assessment, the Director of Lands wrote to it on April 21, 1952 (Exhibit 2) to the effect that whatever rights it had over the land in question were considered "waived" (forfeited). On the same date, the Bureau also addressed letters to the defendants, who had before been paying rentals to plaintiff's lessee Zacarias de Guzman, to pay the rentals for the portions of Lot No. 79 occupied by them directly to the Bureau. From the time they received said letters, defendants had refused to pay any further rentals to plaintiff, either for the land in question or for plaintiff's building thereon. Hence, the present actions for ejectment filed by plaintiff-appellant against them.

The question for determination in these appeals is whether or not plaintiff-appellant has the right to eject defendants-appellees from the premises in question. Appellant claims that as possessor of the land by virtue of an implied

lease with the Bureau of Lands, and as owner of the building standing thereon and occupied by appellees, it has the right to eject the latter from the premises. Appellees, on their part, claim that appellant is merely a squatter on, and has no legal right to possess, the land in question, or that assuming that it had an implied lease to occupy the same, said right was terminated when the Director of Lands notified and ordered appellees to pay the rentals for the land directly to the Bureau. Upon the other hand, the Director of Lands, represented in these appeals by the Solicitor-General, has manifested that as there is no controversy either as to the ownership of the land in question or the right of the government to collect rentals or fees for the use thereof, it is immaterial to the interests of the government whoever among the parties may be adjudged entitled to its possession.

The real issue, therefore, boils down to who, as between appellant and appellees, has the superior right to possess the premises in question and may, therefore, exclude the other from its possession. In resolving this question, it is important to bear in mind that appellees occupy not only the land in question belonging to the government, but also the building thereon belonging to appellant. It should be noted, too, that appellees, both in their answers and in the stipulation of facts of the parties, admitted that they are in occupation of the building in question merely as subleasees of Zacarias de Guzman, who was in turn appellant's lessee. As possessors of the building and the land on which it stands based on a right derived from a mere sublessor, appellees can invoke no right of possession superior to that of their sublessor (Sipin *vs.* Court, 74 Phil. 649; Madrigal *vs.* Ang Sam To, 46 Off. Gaz. 2173), who in turn derives his right to possess from his lessor, appellant herein. As mere sublessess of appellant's lessee, therefore, appellees can have no right to the premises better than the original lessee, herein appellant.

But appellees have abandoned the issue of lack of privity between them and the plaintiff-appellant. Now in this appeal they squarely contest plaintiff's character as possessor, and urge that, as the administrator of the lot in question (the Director of Lands) had ordered them to pay rentals directly to him, said official had withdrawn possession of the premises in question from appellant and had transferred and ceded the same to them. This position is apparently dictated by appellees' desire to take advantage of R. A. 1268, granting "actual" possessors or occupants preferential right to buy the San Lazaro Estate lots and condoning arrears in fees.

The view taken by appellees is untenable for several reasons. In the first place, appellees are, as already stated,

occupying not only the land of the government, but the building of appellant as well. If appellees are in possession of the land, it is only because appellant's building stands thereon. Their possession of the land is, therefore, dependent on and can not be disassociated from their possession of the building. As the building admittedly belongs to appellant, appellees can not assert any superior right to possess the same as against appellant; therefore, they can not likewise assert any better right to possess the land on which the building stands.

In the second place, as appellant claims to be in the possession of the land in question through an implied contract of lease with the government, that has collected "occupation fees" from it, the former can not be deprived of its possession without the proper court action (Art. 536, New Civil Code). Especially must appellant be given its day in court before it may be ousted from its possession, because it has a building on the premises, of which it would be deprived without due process of law if the Director of Lands is permitted to terminate its right to possess by mere extrajudicial unilateral act.

Lastly, the notice sent by the Director of Lands to the appellees to pay the rentals of the land in question directly to him, can not legally constitute termination of the appellant's possession of the premises. In sending this notice to appellees, the Director of Lands merely availed himself of the remedy granted by law to collect from the sublessee in case of failure of the lessee to pay the rents due (Art. 1652, New Civil Code), so much so that in the Director's letter to all of the appellees of May 22, 1952 (Exhibit "A"), he stated that the monthly rentals demanded by him from them do *"not include rental of the building* which appears to belong to the Philippine Consolidated Freight Lines, Inc.", and that "this occupation fee should, therefore, be deducted from the amount you used to pay to the Philippine Consolidated Freight Lines, Inc.". As a consequence, even in this Court, the Director of Lands, through the Solicitor General, has manifested that it is immaterial to the interests of the government whether possession of the land in question is awarded to appellant or to appellees in these cases.

It appearing, therefore, that appellant has the better and superior right to possess the building and land in question as against appellees, it may recover said possession from the latter by these actions for ejectment. Appellant can not, however, be awarded any damages and/or unpaid rentals in these actions because it has failed to present any clear evidence thereon.

WHEREFORE, the decision appealed from is reversed, and appellees are ordered ejected from the premises object of Civil Cases Nos. 24767, 24768, and 24769 of the court

below. Costs against appellees in all three cases G. R. Nos. 10206, 10207, and 10208 of this Court.

SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and *Félix, JJ.*, concur.

Judgment reversed.

[No. L-10225. November 29, 1957]

ANG IT, petitioner and appellant, *vs.* THE COMMISSIONER OF IMMIGRATION, respondent and appellee

ALIENS; REQUISITE FOR PERMANENT ADMISSION; "CORRECTION" OF STATUS.—If an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secured the benefits of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. No officer can relieve him of the departure requirements of Section 9 of the Immigration Act, under the guise of "change" or "correction", of his status made by the first Deputy Commissioner for the law makes no distinctions, and no officer is above the law. (Ching Tiao Bing et al. *vs.* Commission of Immigration, 52 Off. Gaz. 6551.)

ORIGINAL ACTION in the Supreme Court. Certiorari with preliminary injunction.

The facts are stated in the opinion of the Court.

De La Cruz & De La Cruz for petitioner.

Solicitor General Ambrosio Padilla and *Pacifico de Castro* for the respondent and appellee.

ENDENCIA, *J.:*

This is an appeal from a decision rendered by the Court of First Instance of Manila in Civil Case No. 27176 filed by petitioner-appellant, wherein she prayed that a writ of preliminary injunction be issued to enjoin the respondent Commissioner of Immigration from (1) exacting the cash and surety bonds and from collecting the service fees from the herein petitioner as directed in respondent's letter of August 9, 1955; (2) causing the arrest and confinement of herein petitioner during the pendency of these proceedings; and (3) carrying out the warrant of deportation issued against the herein petitioner on March 27, 1952; and that, after due hearing, the said order of August 9, 1955 be declared null and void and that the writ of preliminary injunction sought for be declared permanent.

After the parties had joined issues and the case been duly heard, the trial court denied the petition and set aside the preliminary injunction issued against the respondent in virtue of the petition. And upon denial by the Court of the motion for reconsideration of the decision, the petitioner appealed contending that the trial court erred—

"1. In holding that the respondent-appellee Commissioner of Immigration can still carry out the order of deportation of April 19, 1950 against the petitioner-appellant for overstaying in this country as temporary visitor despite the order of September 14, 1954 recognizing correct status as that of returning residents;

"2. In applying to the present case the ruling laid down by the Honorable Supreme Court in Ong Se Lun *vs.* the Board of

Immigration Commissioners, G. R. No. L-6070, September 16, 1954 since the circumstances of the present case are different from that cited case;

"3. In holding that the requirement of physical departure provided for in section 9 of the Philippine Immigration Act, as amended by Republic Act 503, section 3, must be complied with and that the petitioner-appellant in the present case must first depart from the country, apply for proper documentation as permanent resident from a Philippine Consulate abroad and thereafter undergo examination by immigration officials at a port of entry in the Philippines before being entitled to permanent admission in this country; and

"4. In not granting the petition."

The case was decided by the lower court on the basis of a stipulation of facts which reads as follows:

"Both parties hereto are agreed on the following established facts appearing on record, to wit:

"1. Petitioner was a permanent resident in this country prior to 1946.

"2. Sometime in 1946, the above-named petitioner went to China for a temporary visit from which she was expected to return to this country.

"3. Petitioner was unable to return to the Philippines immediately and it was only on November 17, 1947 that she came back to the Philippines and was admitted as a temporary visitor.

"4. Petitioner's stay as a temporary visitor having expired, warrant of arrest against her was issued by the Commissioner of Immigration on May 19, 1951, and she was asked to show cause why she should not be deported from the Philippines under the provisions of the Philippine Immigration Act of 1940, as amended.

"5. That upon the institution of deportation proceedings and after investigation duly conducted in accordance with the provisions of section 37 of the Philippine Immigration Act of 1940, as amended, petitioner was ordered deported, warrant of deportation having been issued on March 27, 1952, for having violated section 37(*a*) (7) of the Philippine Immigration Act of 1940, as amended, as found by the Board of Commissioners in its decision dated February 18, 1952, copy of which has been attached as Annex '2' of respondent's answer.

"6. On August 14, 1954, petitioner, thru counsel, requested for the correction of her status from temporary visitor to returning resident, and acting upon this request, the First Deputy Commissioner, Hon. Francisco de la Rosa, who was then Acting Commissioner of Immigration, following the findings and recommendation of an investigator assigned to investigate petitioner's request, in an order dated September 2, 1954 ordered that the records of the Bureau of Immigration be duly corrected to make petitioner appear that she has been readmitted on November 17, 1947 as a returning resident instead of as a mere temporary visitor, and that the corresponding immigration certificate of residence to evidence permanent resident be issued to her. (Annex A, Petition.)

Upon careful scrutiny of the record of the case, we find it completely identical to that case of Sy Hong et al., petitioners-appellants, *vs.* Commissioner of Immigration, respondent-appellee, G. R. No. L-10224, which we decided on May 11, 1957, for the facts involved in that case and the stipulation of facts submitted therein are

completely similar to the facts and stipulation of facts involved herein, and the questions raised in this case are exactly the same as those raised in that case. Hence we find that our ruling in the aforementioned case of Sy Hong et al. *vs.* Commissioner of Immigration is controlling in the present case, and for this reason we hereby reproduce it:

"We agree with the Court below and the respondent Commissioner of Immigration that appellants' case falls squarely under the doctrine laid down by this Court in the case of Ong Se Lun, et al. *vs.* Board of Immigration Commissioners, *supra.* It is true that appellants were, prior to February, 1940, admittedly permanent residents of this country. It is also admitted, however, that they were unable to return to the Philippines within the period of the validity of their special return certificates and gained admission into this country on May 10, 1948 only as temporary visitors. Having lost their right to reentry as permanent residents, and having been admitted as temporary visitors or nonimmigrants, and the period allowed for their temporary sojourn in these Islands having already expired, appellants are, under the law, subject to deportation by the Commissioner of Immigration.

"Appellants insist that they are not really temporary visitors but permanent residents, and that their status had already been corrected by former Deputy Commissioner of Immigration Francisco de la Rosa, after proper investigation, from temporary visitors to returning permanent residents. We have, however, already ruled such corrections of aliens' status by the Commissioner of Immigration as illegal and against public policy in the already cited case of Ong Se Lun *vs.* Board of Immigration Commissioners, as well as in the more recent case of Chiong Tiao Bing *vs.* Commissioner of Immigration, G. R. L–9966, September 28, 1956, wherein we said:

'(1) Under the law then in force, the Boards of Inquiry only "have authority to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded" (C. A. 613, section 27 (*b*), and nowhere in the law are these Boards conferred power to determine whether an alien who has already landed or entered as "temporary visitors" should be admitted for permanent residence.' (Ong Se Lun *vs.* Board of Immigration, *supra.*)

'* * * It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. No officer can relieve him of the departure requirements of section 9 of the Immigration Act, under the guise of "change" or "correction", for the law makes no distinctions, and no officer is above the law. Any other ruling would, as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort in examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The danger inherent in such a ruling is self-evident.' (Chiong Tiao Bing *vs.* Comm. of Immig., *supra.*)

"Nor can there be merit in appellants' argument that the order of former Deputy Commissioner De la Rosa correcting their status from 'temporary visitors' to 'permanent residents' is *res judicata*, and that the incumbent Commissioner of Immigration is now in estoppel to set aside said order. As we have previously held, decisions of the immigration officials do not constitute *res judicata* so as to bar reexamination of the aliens' right to enter or stay (Ong Se Lun *vs.* Board of Immigration Commissioners, *ante*). And what is more, no vested rights can be acquired on a wrong construction of the law by administrative officials, and such wrong interpretation does not place the government in estoppel to correct or overrule the same (Hilado *vs.* Collector of Internal Revenue and Court of Tax Appeals, G. R. L–9408, October 31, 1956). Appellants, therefore, cannot find relief in the illegal correction of their status by the former Deputy Commissioner of Immigration. The course open to them to gain permanent admission to this country is, as pointed out in the Ong Se Lun case, to voluntarily depart to some foreign country and procure from the appropriate consular official the proper visa for admission to the Philippines as permanent residents.

"Finally, appellants, in a supplemental memorandum, call attention to our recent decision in the case of Chiong Tiao Bing *vs.* Commissioner of Immigration, G. R. L–9966, promulgated September 28, 1956, (already cited above), and urge that their case falls within its purview. Again we fail to find merit in this argument. The holding of this Court in the Chiong Tiao Bing case allowing the petitioners minors to stay permanently in this country although they were admitted as 'temporary visitors', was based on the important consideration that there had been no misrepresentation or deceit on their part as to their real status; for long before their entry, right after the termination of the last war, they had already claimed, exercised efforts, and made representations with our government to have their right to return as permanent residents recognized, and they accepted temporary visas only to escape from the Communist forces that had taken over their place of residence in China while awaiting action on their case. Hence, we held that the issuance of the temporary visas to them by our government was an assent to their entry pending final decision on their right to return as permanent residents, which decision was later rendered in their favor in the order of the Commissioner of Immigration recognizing their status as permanent residents.

"No parallel facts may be found in the present case of appellants. All that appears in the parties' stipulation of facts is that appellants, although permanent residents of this country prior to 1940, gained entry thereto in 1948 as temporary visitors. It does not appear that appellants had, like the petitioners in the Chiong Tiao Bing case, made known to the Philippine government and sought to establish their right to enter these Islands as permanent residents prior to their admission therein as temporary visitors; nor does it appear that, like the petitioners in the Chiong Tiao Bing case, appellants were only forced to accept temporary visas to escape from Communist invasion in China. All that is admitted is that appellants gained entry to this country on the strength of a deliberate and voluntary representation that they would enter only for a limited time; and it was only after the issuance of a warrant of deportation against them upon the expiration of the period of their temporary stay that they asserted for the first time their previous status as permanent residents. Having made a representation to stay in this country only for a limited time, and having benefited by such representation, appellants can not later be allowed to go back on their word and insist on

permanent residence, without first departing from the Philippines as they had bound themselves to do. The reason is, as explained by us in the Chiong Tiao Bing case (cited on page 4, *ante*), to discourage and avoid entry of aliens to this country on false pretenses."

WHEREFORE, finding no errors in the decision appealed from, the same is hereby affirmed, with costs against the appellant.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and *Felix, JJ.,* concur.

Decision affirmed.

[Nos. L–11519 and L–11520. April 30, 1958]

INÉS PORCIUNCULA ETC., ET AL., plaintiffs and appellants, *vs.* NICOLÁS E. ADAMOS ET AL., defendants and appellees

1. CONJUGAL PROPERTIES; SALE BY THE SURVIVING SPOUSE BEFORE PARTITION; EFFECT OF.—After the death of either husband or wife, the properties acquired by the spouses during their marriage cease to belong to the conjugal partnership which was then dissolved, and instead become the properties of the surviving spouse and the heirs of the deceased. Thus, the surviving spouse can not validly alienate the properties of the partnership before any partition of the properties is made and in the absence of proof that the heirs have renounced their inheritance from the deceased. The sale shall be valid only as to the portion that may correspond to the surviving spouse in the partition.

2. PLEADING AND PRACTICE; MOTION FOR NEW TRIAL; ALLOWANCE OR DENIAL OF MOTION DISCRETIONARY UPON COURT.—The granting or denial of a motion for new trial rests upon the sound discretion of the court and in the interest of justice, a motion for new trial based on a ground which may be considered as falling under fraud, accident, mistake or excusable negligence may be allowed by the courts. And where a court's ruling on a question calls for the exercise of this prerogative, such ruling deserves the respect of the appellate courts in the absence of manifest abuse of discretion.

APPEAL from a judgment of the Court of First Instance of Rizal. Caluag, *J.*

The facts are stated in the opinion of the Court.

Capistrano & Capistrano for plaintiffs and appellants.
Quirino D. Carpio for petitioners and intervenors.
Vicente C. Feria & Nicolás E. Adamos for themselves as defendants and appellees.

FÉLIX, *J.:*

Lots Nos. 818–C–3, 818–C–4 and 818–C–5 of the Piedad Estate, subdivision plan Psd–16489, containing 29,995, 29,995 and 50,005 square meters, respectively, formerly parts of Lot No. 818–C of plan Psd–2507, GLRO Record No. 5975, located in barrio Bayanbayanan, Caloocan, Rizal (now Diliman, Quezon City) were formerly owned and registered in the name of Juan Porciuncula, married to Regina Nicolás, and covered by Transfer Certificate of Title No. 419 (Exh. A). Ten thousand (10,000) square meters of Lot No. 818–C–5, however, appears to have been sold to Antonio Isidro on September 26, 1940.

On November 22, 1940, Juan Porciuncula executed a deed conferring on Nicolás E. Adamos, a lawyer, the authority to look for buyers of the abovementioned lots as well as of Lot No. 824–B of the Piedad Estate, subdivision Plan Psd–824, the area of which was not stated, also owned by the former and covered by Transfer Certificate of Title No. 20898 (Exh. G). This instrument was superseded by another document dated January 13, 1941, authorizing said Nicolás Adamos to subdivide the

same into small lots to be sold either in cash or on installments (Exh. H), and pursuant thereto, Lots Nos. 818–C–3, 818–C–4, and 818–C–5 were consolidated and divided into 3: Lot No. 1 containing an area of 40,000 sq. m. was sold in cash to the Real Monasterio de la Purísima Concepción de Nuestra Madre Santa Clara de Manila which was duly registered and for which Transfer Certificate of Title No. 69059 in the name of said corporation was correspondingly issued (Exh. C). Transfer Certificate of Title No. 69060 covering Lots 2 and 3 of the said consolidation and subdivision plan Psd–1078 with 3,600 and 56,395 square meters, respectively, was issued on *December 11, 1943,* in the name of Juan Porciuncula *married to Regina Nicolás* (Exh. D), although the latter had already been dead for several years or since August 29, 1931 (Exh. B). These remaining properties of Porciuncula were consequently transformed into a subdivision (University Orchard Subdivision) and among those who were able to purchase lots in cash or on installment basis were the following:

Gavino Custodio	Lot 67, Block 1—	384	sq.m.
Juan Belisario	Lot 1, 2, 15 & 16, Block 4—	1,392	sq.m.
Guadalupe Cabrera	Lot 5, Block 5—	300	sq.m.
Dorotco Peralta	Lot 76, Block 1—	300	sq.m.
Conrado Rosete	Lot 8, Block 1—	300	sq.m.
Conrado Rosete	Lot 9, Block 1—	300	sq.m.
Catalina Alba	Lot 11, Block 1—	300	sq.m.
Alfonso Cabrera	Lot 68, Block 1—	384	sq.m.
Guadalupe Cabrera	Lot 69, Block 1—	384	sq.m.
Geronimo Mercado	Lot 74, Block 1—	295	sq.m.
Geronimo Mercado	Lot 75, Block 1—	360	sq.m.
Patricio Rigonan	Lot 8, Block 5—	396	sq.m.
Filomena Paragas	Lot 99, Block 1—	300	sq.m.
Filomena Paragas	Lot 100, Block 1—	300	sq.m.
Filomena Paragas	Lot 101, Block 1—	295	sq.m.
Filomena Paragas	Lot 10, Block 4—	396	sq.m.
Rosario Eufemio	Lot 1, Block 2—	390	sq.m.
Amado Aleta	Lot 17, Block 2—	300	sq.m.
Amado Aleta	Lot 18, Block 2—	390	sq.m.
Patricio Rigonan	Lot 8, Block 5—	396	sq.m.
Donato Valenzuela	Lot 1, Block 7—	396	sq.m.
Donato Valenzuela	Lot 16, Block 7—	396	sq.m.
Pacita Roxas	Lot 1, Block 8—	396	sq.m.
Agapito Fabra	Lot 16, Block 8—	396	sq.m.
Remedios Aguilar	Lot 1, Block 9—	396	sq.m.
Maura Aguilar	Lot 2, Block 9—	300	sq.m.
Gervacio Factora	Lot 8, Block 9—	396	sq.m.
Pacita Lopez	Lot 16, Block 9—	396	sq.m.
Troadio Millora	Lot 10, Block 1—	300	sq.m.

(Exhs. 9, 10, 11, 12, 13, 13a, 14, 15, 16, 17, 17a, 18, 19, 20, 20a, 20b, 20c, 21, 22, 22a, 23, 24, 24a, 25, 26, 27, 28, 29, 30, 31). Adamos claimed that the records of other purchases were even lost during the last world war.

On *December 13, 1943,* Juan Porciuncula, then about 88 years of age, executed a deed revoking the power of attorney conferred on Atty. Nicolás Adamos and relieving the latter of his responsibility under said agency on the ground that the trust had been performed to his satisfaction. In virtue of the same instrument, Porciuncula further ratified all acts performed by his attorney-in-fact in accordance with the special power of attorney granted him and same were made *binding upon the heirs of said principal* (Exh. 34). On the same day, however, (December 13, 1943), Porciuncula conveyed ownership of Lots Nos. 2 and 3 unto Nicolás Adamos and Vicente Feria by means of an absolute deed of sale in consideration of ₱21,703.80, except a portion with an area of 1,692 square meters already sold to Patrocinio Valenzuela and Angel Girón, although the payment for the said area was included in the aforementioned purchase price (Exh. 35). Consequently, T.C.T. No. 69475 covering said properties was issued on *December 14, 1943,* in the names of Nicolás Adamos and Vicente Feria (Exh. E).

It appears that even subsequent to the said transfer of ownership, lots in the University Orchard Subdivision were sold by Adamos and Feria, now in their capacity as owners of the same, to third parties some of whom were:

Matilde de Veyra	Lot 2,	Block 2—400 sq.m.
Matilde de Veyra	Lot 1 & 114,	Block 3—409 sq.m.
Ramon Obaña	Lot 4,	Block 3—400 sq.m.
Espiridion Bacsa	Lot 3,	Block 2—400 sq.m.
Narciso Fontecha	Lot 7,	Block 7—409 sq.m.
Romeo Vergara	Lot 3,	Block 2—400 sq.m.
Josefa Asunción	Lot 3,	Block 3—400 sq.m.
Josefa Asunción	Lot 4,	Block 3—400 sq.m.
Viola Adamos	Lot 1,	Block 6—409 sq.m.
Viola Adamos	Lot 2,	Block 6—400 sq.m.
Jose S. Villanueva	Lot 1,	Block 8—532 sq.m.

Exhs. 38, 38–a, 39, 40, 41, 42, 43, 43–a, 44 and 45).

Juan Porciuncula died of old age on *January 20, 1945* (Exh. F). On March 31, 1947, his surviving daughter, Inés Porciuncula, together with his granddaughters Calixta Porciuncula, Adelaida Porciuncula and Pelagia de los Santos filed a complaint against Nicolás Adamos, Vicente Feria and the Register of Deeds of Quezon City, with the Court of First Instance of Rizal (Civil Case No. 174) seeking the annulment of the deed of sale executed by the deceased Juan Porciuncula in favor of said defendants (Exh. 35) allegedly because same had no valuable consideration; that it was obtained through fraud; that said sale was prohibited by law because when it was executed, Adamos was the attorney-in-fact of the vendor whereas Feria was the deceased's notary and lawyer. The complaint thus prayed that the sale be declared a nullity; that Transfer Certificate of Title No. 69475 in the names

of defendants be cancelled and a new one issued in favor of plaintiffs; or in case this would not be possible, defendants be ordered to pay the current value of the properties at ₱2.00 per square meter; that defendants be ordered to pay them ₱11,000.00 out of the ₱13,294.45—the uncollected payments of the lots sold on installments, payment of which was assumed by the said defendants; plus the costs of the suit. A notice of *lis pendens* was likewise registered with the Register of Deeds of Quezon City. Defendants filed a motion to dismiss said complaint on the grounds that plaintiffs had no legal capacity to sue and that they were already estopped from presenting their claim. But in view of the answer filed by the Register of Deeds of Quezon City to the effect that the deeds and titles involved in the action were in the file of the Register of Deeds of Manila, the Court ordered the corresponding amendment of the complaint so as to make the latter official a party defendant therein in lieu of the former. A motion to dismiss was again filed by defendants, but was denied by the Court. Defendants thus filed their answer alleging that the transactions between Juan Porciuncula and defendants Adamos and Feria were in accordance with law; that the deceased voluntarily offered the remaining unsold portion of the properties in question to defendants; that the husbands of plaintiffs Inés Porciuncula and Pelagia de los Santos were even witnesses to the due execution of the deed of sale and consideration therefor was paid in their presence; that the said deed of sale was executed after the special power of attorney granted to defendant Adamos by the deceased was cancelled; that plaintiffs received their respective shares of the proceeds of the sale for which they signed certain receipt and waiver; that as in the final settlement of the trust defendants assumed the responsibility of collecting and turning over to Pelagia de los Santos and her husband the uncollected installments on the lots already purchased amounting to ₱13,294.45, the late Juan Porciuncula gave them 5 years from the termination of the then period of emergency within which to settle the same; that immediately after the consummation of the sale, the spouses Inés Porciuncula and León Cruz entered as tenants of defendants on the cultivable portion of the property and such relationship of landlord and tenant continued until the filing of the instant action. By way of counterclaim, defendants demanded the amounts of ₱2,500 for transportation expenses and loss of earning and ₱50,000 for damages. Plaintiffs, however, presented a second amended complaint on April 24, 1948 which was practically the same as the first amended complaint with the addition that the properties were acquired during the existence of the conjugal partnership and were con-

jugal properties of said spouses. Said pleading was admitted by the trial court on May 21 of the same year. To this order of admission, defendants filed a motion for reconsideration which was set for hearing on July 14, 1948, together with the trial of the case on the merits.

Meanwhile or on *August 27, 1947*, the same plaintiffs filed another complaint with the Court of First Instance of Rizal (Civil Case No. 295) against Nicolás Adamos and Vicente Feria, demanding for the adjudication in their favor of 54,997½ sq. m. of the parcels of land, now covered by Transfer Certificate of Title No. 68475 in the names of said defendants, which was allegedly the share of Regina Nicolás in the conjugal properties acquired by her and Juan Porciuncula during their marriage; or in case that would be impossible to do, then defendants be ordered to pay the value thereof at the rate of ₱1.00 per square meter and for such other remedies as may be just in the premises. A motion to dismiss was timely filed by defendants, but as the determination of the grounds adduced therein was deferred until the trial of the case on the merits, defendants correspondingly filed their answer. It was averred that granting that the heirs of Regina Nicolás had any right at all, such right had been lost when it was not exercised against Porciuncula during the latter's lifetime; that plaintiffs could not have done so because they had already received their shares from the estate of Regina Nicolás; that the right of partition cannot be invoked against innocent purchasers for value; that having received part of the purchase price, plaintiffs were now estopped from claiming said properties any further; that the sale between Juan Porciuncula and defendants was legal and valid; that the lots mentioned in the complaint was also the subject matter of another action between the same parties before the same court. Defendants therefore prayed for the recovery of ₱2,000 by way of attorney's fees and transportation expenses.

The records show that on July 14, 1948, Civil Cases Nos. 174 and 295 were called for hearing but the defendants in said cases failed to appear, thus their motion for reconsideration of the order admitting the second amended complaint was denied and the lower court proceeded with the reception of plaintiffs' evidence for both cases. On November 12, 1948, the lower court rendered judgment declaring the sale of the properties in favor of defendants as null and void for lack of consideration and dismissed Civil Case No. 295. Hence, it was ordered that Transfer Certificate of Title No. 69475 be cancelled and a new one be issued in favor of plaintiffs as heirs of the deceased spouses Juan Porciuncula and Regina Nicolás. Defendant Nicolás Adamos was also required

to pay the sum of ₱13,294.45 to plaintiffs with legal interest from the date of the filing of the action in Civil Case No. 174 to the date of actual payment, with costs.

On being notified of the decision on January 13, 1949, defendants filed separate motions for new trial asserting that their failure to appear at the trial was based on their belief that the hearing would be postponed; that even granting that the motion for postponement would be denied, the matter to be considered should have been only the admission of the second amended complaint, the result of which defendants should have been properly notified in order to give them opportunity to file their answer thereto. They contend, therefore, that the promulgation of the decision was premature as it deprived defendants of the right to present their evidence. On February 28, 1949, plaintiffs opposed the motion for new trial and prayed in turn that in accordance with Article 1, Rule 39 of the Rules of Court, an order of execution of the decision already rendered in Civil Case No. 174 be issued. On March 19, 1949, the lower court, presided over by another Judge, set aside the decision of November 12, 1948, and ordered a new trial, thus denying plaintiffs' prayer for the issuance of an order of execution. Due hearing was conducted thereon until August 21 of that year. On January 23, 1950, however, the spouses Quirino and Pacita Carpio filed a petition to allow them to intervene in the proceedings claiming that they were the purchasers of Lots Nos. 4, 5, 10 and 11 of Block No. 5 of the consolidation and subdivision plan No. 1078 (University Orchard Subdivision) on December 1, 1943; that due to the loss of the vendors' duplicate certificate, they were not able to register their aforementioned lots; that they were not advised by vendors Adamos and Feria of any claim on said properties and obtained knowledge of the controversy only when they presented to the Register of Deeds for registration the deed of sale in their favor and same was refused in virtue of the existence of the notice of *lis pendens*. They prayed the Court that said intervenors be adjudged owners of Lots Nos. 4, 5, 10 and 11 of Block No. 5 of the University Orchard Subdivision (It is to be noted, however, that lot No. 5 of Block No. 5 was sold by Adamos as attorney-in-fact of Juan Porciuncula to Guadalupe Cabrera—Exhibit 11); and that the Register of Deeds of Quezon City be ordered to issue the corresponding title in their names. After plaintiffs and defendants had filed their respective answers to said complaint in intervention, the Court *a quo* rendered decision dated November 24, 1950, dismissing plaintiffs' complaint in Case No. 174 on the ground that the contract of absolute sale sought to be nullified was valid, the relationship between Porciuncula on one hand and Adamos

and Feria on the other having been terminated before said sale was consummated; that there could not have been any fraud or deceit in said sale because plaintiffs were present when the transaction took place and furthermore said heirs received their respective shares in the proceeds thereof. The court also denied plaintiffs' prayer for the immediate delivery to them of the amount of ₱13,294.45 for the reason that because of the existence of the notice of *lis pendens,* defendants were not able to collect the same and should not therefore be held accountable therefor. Intervenors Quirino and Pacita Carpio were likewise declared owners of the lots purchased by them from defendants. Plaintiffs filed a motion for reconsideration of said decision and new trial, which was denied on February 22, 1951. Thus the matter was brought on appeal to the Court of Appeals, but as the amount involved therein exceeds ₱50,000, the latter Tribunal elevated the same to Us for proper consideration in accordance with Section 17 (5) of the Judiciary Act of 1948. Abandoning their claim for partition and concentrating on the questions presented by Civil Case No. 174, appellants in this appeal claim that the lower court erred:

1. In granting a new trial and in denying plaintiffs' motion for execution.
2. In holding that the contract of sale, entered into between Juan Porciuncula, vendor, and Nicolás E. Adamos and Vicente C. Feria, vendees, on December 13, 1943, was valid.
3. In not ordering the cancellation of Transfer Certificate of Title No. 69475 in the names of Nicolás E. Adamos and Vicente C. Feria and the issuance of a new transfer certificate of title in the names of Inés Porciuncula and Calixta Porciuncula.
4. In holding that the intervenors have acquired the ownership of the four small lots sold to them by defendant Feria alone on September 25, 1944.
5. In holding that the obligation of defendant Adamos to pay the amount of ₱13,294.45 was not due and demandable.

I. As a general rule, the granting or denial of a motion for new trial rests upon the sound discretion of the court and in the interest of justice, a motion for new trial based on a ground which may be considered as falling under fraud, accident, mistake or excusable negligence may be allowed by the courts. And where a court's ruling on a question calls for the exercise of this prerogative, such ruling certainly deserves the respect of the appellate courts in the absence of manifest abuse of discretion. Thus, taking into account the reasons on which the motions filed by defendants were founded, We find no reason to disturb the lower court's action in setting aside the decision of November 12, 1948, and ordering for a new trial of the case.

II. The records contain no specific data or list of the properties acquired by the spouses Juan Porciuncula and

Regina Nicolás during their married life nor of their separate properties, if there were any, other than the affidavit executed by Pelagia de los Santos (Exh. 2–Adamos), one of the original plaintiffs in Civil Case No. 174 but who did not join with the others in this appeal; and as the facts stated therein were not controverted by appellants, We have no alternative but to rely on the same.

It appears from said Exhibit 2 that the spouses Juan Porciuncula and Regina Nicolás were the owners of Lot No. 818 of the Piedad Estate located in Diliman, Quezon City; of a homestead in Diliquias, Montalban, Rizal, with an area of 16 hectares; of an urban lot in López Jaena street, also in Montalban; and of Lot No. 824–B, with an area of 8.7060 hectares, in Diliman, Quezon City. Although in the power of attorney conferred on Adamos by the deceased Juan Porciuncula (Exh. G) he was instructed that the lot covered by T.C.T. No. 20898 (Lot No. 824–B) should be disposed of as a whole, it seems that this piece of property was actually divided and distributed among the heirs as follows:

824–B–1	3.0005	hectares—Pelagia de las Santos
824–B–2	2.7066	hectares—Oliva Porciuncula
824–B–3	1.0002	hectares—Adelaida Porciuncula
824–B–4	1.0001	hectares—Adelaida Porciuncula
824–B–5	.9986	hectares—Adelaida Porciuncula

The homestead in sitio Diliquias, Montalban, went to Inés Porciuncula and Adelaida Porciuncula, while the urban property in López Jaena, Montalban, was in turn given to Calixta Porciuncula. Lot No. 818 was first divided as follows:

818–A	5.000	hectares—Simeón de los Santos
818–B	4.998	hectares—Inés Porciuncula
818–C	14.995	hectares—remained undisposed of.

The record does not give any enlightenment as to when said properties were distributed nor in what capacities the aforementioned persons received the same. It does appear, however, that Lot No. 818–C which was left to the spouses was further divided into the following: Lots 818–C–1 and 818–C–2, with a total area of 4.0000 hectares were sold to Dr. Gumersindo García and others (Dr. García actually purchased only 20,000 sq. m. of the same on November 5, 1938—Exh. 49); and Lots 818–C–3, 818–C–4, and 818–C–5, with an aggregate area of *10.995 hectares* were registered on *July 17, 1940,* in the name of Juan Porciuncula, *married to Regina Nicolás,* for which T.C.T. No. 419 was correspondingly issued (Exh. A). These lots were later consolidated and then divided into 3 lots (Pcs–1078) after deducting 10,000 square meters which were purchased by Dr. Antonio Isidro on September 26, 1940 (Exh. 48), thus leaving 9.995 hectares in the name of Juan Porciuncula, married to Regina Nicolás. Of

this remaining portion Lot No. 1, containing an area of 4.0000 hectares, was sold to the Real Monasterio de la Purísima Concepción de Nuestra Madre Santa Clara de Manila (Exh. 33), and Lots 2 and 3, with 3,600 square meters and 5.6395 hectares, respectively, were later divided into small lots and transformed into a subdivision (University Orchard Subdivision) under the supervision of Nicolás Adamos. Said Lots 2 and 3 of the consolidation and subdivision plan (Pcs–1078) with a total area of 5.9995 hectares were registered on *December 11, 1943,* still in the name of Juan Porciuncula, married to Regina Nicolás and was covered by T.C.T. No. 69060. Three days thereafter, however, or on *December 14, 1943,* said title was cancelled and T.C.T. No. 69475 was issued in the names of Nicolás Adamos and Vicente Feria on the strength of an absolute deed of sale dated December 13, 1943, executed by Juan Porciuncula in their favor (which appellants claimed to be without consideration). While we may agree that the registration of Lots Nos. 2 and 3 in the name of Juan Porciuncula, *married to Regina Nicolás,* on December 11, 1943, which must have been procured by Attys. Adamos and Feria and the circumstances under which said title was cancelled and a new one issued in their favor, arouse suspicion, the evidence presented by appellants falls short of a degree that may sustain a conclusion that the absolute deed of sale executed by Porciuncula was vitiated for lack of consent or consideration. On the other hand and despite appellees' protestations to the contrary, the insertion of the vendor's status as married does not seem to be a mere honest mistake or could be attributed to their ignorance of the true fact considering that appellees are familiar with the family of the vendor; and having prepared the deeds connected with the transactions in question, such matter as status of a person should ordinarily have been looked into. Although the way We look at it, such misstatement seems to be part of a preconceived scheme to facilitate the transfer of the properties to them and thus avoid the consequential questions that might have arisen in case the vendor would appear to be a widower, such fact alone does not prove that undue influence was exercised or fraud in the nature of specific acts or machinations was employed to induce the vendor, a very old man, to enter into the contract of sale sought to be nullified.

Appellants' assertion that what Juan Porciuncula sold did not absolutely belong to him deserves consideration. It was maintained that upon the death of Regina Nicolás on *August 29, 1931,* the properties acquired by the spouses during their marriage ceased to belong to the conjugal partnership which was then dissolved, and instead became the properties of the surviving spouse and the heirs of

the deceased. Thus, appellants contend, that Juan Porciuncula as co-owner of the same could only validly alienate HIS corresponding interest in the conjugal partnership which still had to be determined after proper liquidation and distribution. There is no controversy that the properties involved herein were acquired by Juan Porciuncula and Regina Nicolás during their marriage and while it is true that upon the death of the wife she was survived by her husband, her daughter Inés and granddaughters Calixta Porciuncula, Adelaida Porciuncula and Pelagia de los Santos, no liquidation of the conjugal partnership appears to have been ever effected, although Juan Porciuncula continued to be the administrator thereof. As upon the death of the wife, Regina Nicolás, her share in the conjugal partnership was transmitted to her heirs (Art. 657, Spanish Civil Code; now Art. 777); and considering that Juan Porciuncula disposed of the properties of the partnership after the demise of his wife and before any partition was ever made and in the absence of proof that the heirs had renounced their inheritance from the deceased, because Exhibit "36" that in part is hereafter reproduced, can by no means be taken as Inés Porciuncula's waiver of her share of the property left by her mother, Regina Nicolás, the conclusion is inevitable that as far as the portion or share that corresponds to said deceased wife and which descended to her heirs is concerned, any alienation thereof by the husband is null and void.

Appellees do not contest that the properties in controversy were conjugal; they, however, set up the defense that upon the death of the wife, the husband became the administrator of the conjugal estate and could lawfully encumber or dispose of the same. This point was already settled by this Court when it pronounced that:

> The death of either husband or wife does not make the surviving spouse the *de facto* administrator of the conjugal estate or invest him or her with the power to dispose of the same. The sale of conjugal property by the surviving spouse without the formalities established for the sale of the property of deceased persons shall be null and void, except as to the portion that may correspond to the survivor in the partition (Corpuz *vs.* Corpuz, 51 Off. Gaz. No. 10, p. 5185).

Appellees also advance the argument that appellants Inés Porciuncula and Calixta Porciuncula received their corresponding share in the proceeds of the sale and signed separate waiver of whatever right they may still have. Said waiver, most likely drawn and prepared by appellees, containing the thumbmark of Inés Porciuncula (the receipt allegedly signed by Calixta Porciuncula was said to have been lost), was worded as follows:

> "That I hereby and by these presents acknowledged to have received this date to my entire satisfaction the sum of FIVE THOUSAND PESOS (₱5,000.00), Philippine Currency, in hand paid by my father,

JUAN PORCIUNCULA, *as my share in full* FROM HIS ESTATE in addition to what I have already received;

"That in consideration of the said sum given to me, I hereby voluntarily and by these presents DO WAIVE any right that I may or might have on any remaining portion of HIS ESTATE or on any property, personal or real, which he has acquired or will acquire from now on;

* * * " (Exh. 36).

A perusal of the aforequoted receipt discloses that it is more of a renunciation by Inés Porciuncula of whatever she expects to inherit *from her father,* upon receipt of the sum of ₱5,000 in addition to whatever she may have already received from him. It cannot be gainsaid that appellants are claiming, not for the share of Juan Porciuncula in the conjugal partnership, but of Regina Nicolás which was transmitted to them by operation of law upon her death in 1931. Furthermore, said instrument is by itself also void as it partakes of a renunciation of a future inheritance (Art. 816, Spanish Civil Code; now Art. 905). Obviously, therefore, appellees' allegation that appellants had waived their right to inherit from Regina Nicolás cannot be sustained. In this connection, We may say that while it may be presumed that the sale in question was made for a valuable consideration, the vendees Adamos and Feria may not be considered as innocent purchasers because it is inconceivable that they should not know all along that the properties being conveyed by Juan Porciuncula were part of the conjugal estate which should be liquidated and that no partition among the heirs had yet been effected. As a sale involves the transfer of dominion and no man can transfer to another a better title that he himself had over it, nor can he transmit any right over properties that do not belong to him (Coronel *vs.* Ona, 33 Phil. 456), the dispositions made by Juan Porciuncula, in so far as the portions or shares corresponding to the heirs of Regina Nicolás are concerned, must be held to be a complete nullity.

The foregoing considerations notwithstanding, We notice that the record of the case is incomplete in many essential points which need clarification, because the evidence submitted by the parties are insufficient to arrive at a proper and adequate determination of the questions at issue. For example, and as already stated before, the evidence does not show:

(1) What were the conjugal properties of the spouses Juan Porciuncula and Regina Nicolás at the time of the latter's death on August 29, 1931;

(2) On what date Lots 824–b–1, 824–b–2, 824–b–3, 824–b–4, 824–b–5, 818–a and 818–b were received by Pelagia de los Santos, Oliva Porciuncula, Adelaida Porciuncula, Simeón de los Santos and Inés Porciuncula or in what capacities they accepted said properties;

(3) Whether there was any liquidation and distribution of the personal properties of Regina Nicolás and of her share in the

properties acquired during her marriage to Juan Porciuncula, and if so, when and how such liquidation and distribution were carried out;

(4) Whether Inés and Calixta Porciuncula have ever renounced all or any part of their inheritance from Regina Nicolás aside from Exhibit "36" which refers to the *estate of Juan Porciuncula;*

(5) The real value of the properties sold to defendants Adamos and Feria, and whether by such sale the legitime of appellants has been adversely affected; and

(6) Whether such sale is subject to the liquidation of the conjugal partnership of the spouses Juan Porciuncula and Regina Nicolás.

A writer on mystery cases has inspiredly stated that "the law is the science of applying justice to facts which have previously been determined and which are properly adduced in a court of law. When those facts have not been properly collected, the law is groping in the dark. That is why we have cases involving a miscarriage of justice." In order that any such miscarriage of justice may not happen in the case at bar, We are inclined to avail of the provisions of Section 9, Rule 50, in connection with Section 1, Rule 58, of the Rules of Court, and in the interests of justice and for the proper determination of the issues involved herein, We consider necessary to remand the record of the case to the lower court for rehearing and further proceedings.

WHEREFORE, the decision in case G. R. No. L–11519 (CFI Civil Case No. 174) is hereby set aside and the records thereof remanded to the lower court for reception of such evidence as the parties may care to produce in order to establish their respective contentions in this matter. Case G. R. No. L–11520 (CFI Civil Case No. 295) is dismissed, appellants having desisted from prosecuting the same. Without pronouncement as to costs.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B. L., and *Endencia, JJ.,* concur.

In Case G. R. No. L–11519, *judgment is set aside with instructions*; Case G. R. No. L–11520 *is dismissed.*

DECISIONS OF THE COURT OF APPEALS

[No. 19079-R. July 30, 1958]

GREGORIA VALENCIANO VDA. DE BARBIN, applicant and appellee, *vs.* CAYETANO JORDAS, EPIFANIO JORDAS, and MAXIMINA JORDAS, oppositors and appellants.

LAND REGISTRATION; OPPOSITION; NON-APPEARANCE OF OPPOSITOR; DISMISSAL OF OPPOSITION IMPROPER.—In a land registration case, where there is an opposition formally filed by an oppositor, it is improper for the court taking cognizance of such case to order the dismissal of said opposition on the ground that the oppositor failed to appear on the day set for the hearing thereof.

APPEAL from an order of the Court of First Instance of Camarines Norte. Ilao, *J.*

The facts are stated in the opinion of the Court.

Prudencio V. Mejia, for oppositors and appellants.
Ernesto de Jesus, for applicant and appellee.

MARTINEZ, *J.:*

This is an appeal from an order of the court below denying a motion to reconsider an order dismissing the opposition filed in this registration case. The facts which gave rise to such incident are as follows:

After due publication, the application for registration was set for hearing but before an order of default could be issued, an opposition was entered and the case was again scheduled for hearing on January 15, 1953. Upon petition of the oppositors a postponement to February 26, 1953 was granted. Again, at the instance of the oppositors, the hearing was deferred to March 12, 1953. Apparently, the oppositors failed to appear on that day and the applicant was permitted to submit her evidence in the absence of the oppositors. On August 31, 1953 a decision was rendered which reads as follows:

"This is an application for the registration of a parcel of land of agricultural land, with the improvements thereon, situated in the barrio of Balombon, municipality of Vinzons, province of Camarines Norte, Philippines, more particularly described in the plan (PSU-57333—Exh. A) and in the technical description (Exh. A-1), filed on October 12, 1951, by the herein applicant, Gregoria Valenciano Vda. de Barbin.

It appears from the record of this case that on July 14, 1952, Cayetano Jordas, Epifanio Jordas and Maximina Jordas filed their opposition; that after the necessary publication of the notice of initial hearing has been duly complied with (Exh. H, I, I-1 and J), said application was heard by this Court on July 15, 1952, on which date an order of general default, with the exception of the Bureau of Lands and the afore-named oppositors (Exh. K) was issued.

When this case was called for hearing on August 25, 1953, none of the aforementioned oppositors appeared. The Fiscal manifested that insofar as the Government is concerned he has no opposition

to the instant application. Counsel for the applicant then prayed the Court to allow him to present his evidence, which petition was granted by the Court.

From the evidence presented by the herein applicant, it appears that she acquired the land subject of her application, a part thereof, by inheritance from her aunt, Paula Valenciano, way back in 1914, and another part by way of purchase from her sister Felicula Valenciano sometime in 1923; that the deed of sale executed in her favor by her sister Felicula Valenciano was lost during the war so that she secured from her sister an affidavit confirming said sale (Exh. B); that sometime in 1921, this land has been the subject of a court litigation between Clemente Asis and Cayetano Jordas on the one hand, and Felicula Valenciano and the applicant herein on the other hand (Exh. C); that by virtue of said decision, a commissioner was appointed by the Court to partition the properties subject of said case; that in accordance with the partition made by the commissioner appointed by the Court in that case, the land now applied for was adjudicated to the herein applicant and her sister Felicula Valenciano (Exh. D); that by virtue of the partition made by said commissioner, the Sheriff made delivery of possession of the corresponding portions adjudicated to the respective parties in said case (Exh. E), including the land now applied for; that since the time of the delivery of possession was made by the Sheriff, the applicant herein has been in continuous possession of the land applied for and had been benefiting from the products therefrom; that she has declared this land for taxation purposes in her name under Tax Declaration No. 05070 (Exh. F); that she has been regularly paying the taxes due on this property (Exhs. G, G–1 to G–36); that the land applied for is free from any lien or encumbrance; and that the applicant herein is a Filipino citizen.

The oppositors herein having failed to appear despite the fact that they have been duly notified of the hearing, their opposition should be as it is hereby dismissed.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby adjudicates to Gregoria Valenciano Vda. de Barbin, 77 years of age, Filipino, widow, resident of Vinzons, Camarines Norte, Philippines, the land applied for, together with the improvements existing thereon, which land is more particularly described in the plan Psu–57333 (Exh. A) and in the technical description (Exh. A–1), situated in the barrio of Balombon, municipality of Vinzons, province of Camarines Norte, Philippines. Let a decree of confirmation and registration be entered in favor of said applicant and once this decision shall have become final, the Chief of the General Land Registration Office of Manila is hereby directed to issue the corresponding decree of title in favor of said applicant.

(pp. 10–12, record on appeal)

A motion filed on September 19, 1953, seeking a reconsideration and setting aside of the decision so rendered was granted on February 3, 1954. The case was set for rehearing on June 11, 1954 but was deferred to August 17, 1954 upon petition of the oppositors. Two other deferments, for March 11, 1955 and September 21, 1955, were granted upon the oppositors' motion. The last postponement at the request of the oppositors, was for October 27, 1955. They failed again to appear on that date and the trial Judge, on January 4, 1956, issued an order which reads as follows:

"For failure of the oppositors Cayetano Jordas, et al., to appear when this case was called today for reception of the evidence of the

oppositors, in accordance with the order of this Court dated February 3, 1954, reopening the case and allowing the oppositors to present their evidence, their opposition is ordered dismissed."

(pp. 36–37, record on appeal)

The oppositors' repeated attempts to secure a reconsideration of this order failed. On April 10, 1956, the court below issued an order which reads as follows:

"The opposition of the oppositors Cayetano Jordas, et al., having been dismissed and their motion for reconsideration having been denied, for lack of merit, and it appearing that a decision has previously been rendered in this case under date of August 31, 1953, said decision is ordered revived and shall stand as it is."

(p. 39, record on appeal)

The first and second motion for reconsideration of this order were denied and hence the present appeal. Their below issued an order which reads as follows:

"1. The lower court erred in ordering the dismissal of the opposition due to the failure of the counsel for oppositors-appellants to be present during the scheduled trial on January 4, 1956.

"2. The lower court erred in denying oppositors-appellants' first motion for reconsideration dated January 6, 1956.

"3. The lower court erred in denying oppositors-appellants' second motion for reconsideration dated April 17, 1956."

Indeed, the dismissal of the opposition on the ground of non-appearance of the oppositors was not technically proper. An answer in an ordinary or special action—and in a case of registration an opposition stands as an answer —can only be dismissed if it fails to tender an issue. Should a defendant, after filing a valid answer, fail to appear on the date set for hearing, the Court may, in his absence, allow the plaintiff to substantiate the allegations in the complaint and decide the case on the proved facts alone. In such case, however, it would seem inconsequential that the answer be dismissed or not. For practically, an answer cannot stand if the defense it raises is not shown by evidence. If we view an opposition in a registration case as a counterclaim, the situation will not change.

The first issue here should, therefore, be whether or not the oppositors have been deprived of their day in Court.

We can easily glean from the facts stated above that the oppositors had been deprived of their day in Court on their own fault—their repeated failure to appear on the various occasions the case was set for hearing. They could not prosecute their opposition in more than three years (from July 14, 1952 to October 27, 1955) despite all the opportunities they had been given to do so and certainly, they can hardly complain that they had not been given a hearing. The leniency of the Court to a party must end where it hurts the other. It was, therefore, proper that the court had considered the case sub-

mitted for decision on the evidence already presented after the oppositors had failed to appear on October 27, 1955, the last setting for the rehearing of the case. Likewise, it was well that the Court had denied the oppositors' petition to set aside the order reviving the decision rendered on August 31, 1953.

Now the last question may thus be propounded: has any decision been validly rendered in the instant case?

The decision of August 31, 1953 was signed by Judge Maximo Abaño who first heard this case. This decision meets prefectly the requirements of section 1, Rule 35 of the Rules of Court. It was set aside on February 3, 1954 by Judge Gustavo Victoriano. Can that decision stand now in the light of the order issued by Judge Melquiades G. Ilao on April 10, 1956, reviving it? We believe so, our opinion being that Judge Ilao was correct in considering the case submitted for decision when the oppositors had failed to appear on October 27, 1955. His next concern was naturally to render his decision on the basis of the facts proved in the case. He undoubtedly deemed sufficient those on which Judge Abaño rendered his decision. His Honor would have very well written another decision quoting all the findings of facts and law of Judge Abaño and saying that they had not changed. Putting aside all considerations for mere form, we believe that, through his order of April 10, 1956, Judge Ilao had made as his own the conclusion of facts and law in the decision signed by Judge Maximo Abaño. It is, therefore, a valid decision in this registration case.

Finding no reason why such decision should be set aside, the appeal at bar is now ordered dismissed, without further costs.

David and *Hernandez JJ.*, concur.

Judgment affirmed.

[No. 14488–R. August 1, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JOSE LUZENTALES, defendant and appellant

CRIMINAL LAW; ESTAFA UNDER ARTICLE 316, REVISED PENAL CODE; PREJUDICE OR DAMAGE MAY INVOLVE EVEN THIRD PERSON.—In estafa under Article 316 of the Revised Penal Code, the prejudice or damage may involve a person not necessarily the owner of the object of the swindle, and that it is even enough that the act is done with the intention to cause damage because this is the genuine condition of all the crimes to defraud (7 Groizard, Penal Code, p. 222; People *vs.* Lotivo, 40 Off. Gaz., Sup. 5, p. 104).

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Leuterio, *J.*

The facts are stated in the opinion of the Court.

Tabora & Concon, for defendant and appellant.

Assistant Solicitor General Jose P. Alejandro and Solicitor Conrado T. Limcaoco, for plaintiff and appellee.

DE LEON, *J.:*

The documentary evidence presented in this case shows the following: On January 28, 1946, Florentina Dormido purportedly sold for the cash sum of ₱1,800 to Fernando Ilustre a piece of land of 14 hectares covered by Tax Declaration No. 87, located in barrio Tingtingan-Anib, Sipocot, Camarines Sur (Exhibit H). On or after February 5, 1946, Tax Declaration No. 157 was issued in the name of Ilustre in lieu of Tax Declaration No. 87. The signature of Jose Luzentales, Municipal Treasurer of Sipocot, appears thereon (Exhibit D). On February 8, 1946, an application for an agricultural loan of ₱600 with the Philippine National Bank, Naga Branch, signed by Ilustre, was filed with the office of Luzentales in his dual position as Sub-Agent of the complainant Bank in Sipocot. On the same date, February 8, Luzentales endorsed and favorably recommended approval of the application. On the same date, February 8, Luzentales submitted the income and expense statement of Ilustre (Exhibit I). According to Exhibit I, the land covered by Tax Declaration No. 157, which was being offered as security, consisted of 6 hectares of rice land, yielding 30 cavans of palay valued at ₱1,080; 4 hectares of coconut land, with 300 non-producing coconut trees; 3 hectares of bamboo land with 150 groups of bamboos from which an annual income of ₱600 could be derived; and 1 hectare of land planted to bananas which yielded an annual income of ₱140. In the same income and expense statement Luzentales also certified that Ilustre enjoyed a good credit and financial standing in the community; that Ilustre was an old client of the Bank and had settled his account; that Ilustre was submitting the names of Ireneo Gardiola

and Maximo Enciso as co-makers, they being owners of lands declared under Tax Declaration No. 154 assessed at ₱2,550, and Tax Declaration No. 150 assessed at ₱2,200, respectively; and, that the said co-makers also enjoyed good moral reputation and credit standing in the community. On the same date, February 8, Luzentales also submitted his inspection report (Exhibit L). In this Exhibit L, Luzentales certified that the land offered as security consisted of 6 hectares of riceland with an annual produce of ₱1,200; 4 hectares of coconut land with about 300 coconut trees valued at ₱300; 3 hectares of bamboo land yielding an income of ₱1,200; and 1 hectare of land planted to bananas with an income of ₱250. In said Exhibit L, Luzentales appraised the property at ₱2,950, with a market value of ₱5,000, and an assessed value of ₱2,110. He likewise certified in said Exhibit L that the land was occupied by tenants and some other people had houses thereon.

Apparently, upon the strength of the recommendation of Luzentales, the application in the name of Ilustre was approved. A real estate mortgage (Exhibit E) was executed and same registered with the Registry of Deeds on February 18, 1946. A promissory note for ₱600, dated February 18, 1946, was likewise executed by Ilustre, Maximo Enciso and Ireneo Gardiola, in the presence of Luzentales (Exhibit A). A PNB check for ₱600 was issued in the name of Ilustre on the same date, February 18, and same delivered to, and cashed by, said Ilustre (Exhibit C). The loan was never repaid, despite demands made on Ilustre and his co-makers (Exhibit O) upon the maturity of the note.

The PNB did not foreclose the mortgage because of Ilustre's claim that he did not own the mortgaged property. Instead, Ilustre was charged with *estafa* in the Justice of the Peace Court of Naga, Camarines Sur. Upon his arrest, he filed a bond for his provisional release and among his bondsmen is Francisco Oporto (Exhibit J). He pleaded not guilty to the accusation, waived his right to a preliminary investigation, and the case was forwarded to the Court of First Instance for further proceedings. An information for *estafa* under Article 315, paragraph 3, Revised Penal Code, was filed against Ilustre on September 4, 1948, to which the accused also pleaded not guilty upon arraignment. After Ilustre was investigated, in which he implicated Francisco Oporto and Jose Luzentales, the prosecuting Fiscal filed an amended information for *estafa* through falsification of commercial documents against Fernando Ilustre, Florentina Dormido, Francisco Oporto and Jose Luzentales, and asked that the case be returned to the Municipal Court for preliminary investigation. The trial court ordered the return of the record of the case to the inferior court. The latter court ordered

the arrest of Oporto and Luzentales, but dismissed the case against Dormido for lack of evidence. Oporto and Luzentales pleaded not guilty, waived their right to a preliminary investigation, and the inferior court certified the case to the Court of First Instance for further proceedings. In the Court of First Instance, Ilustre, Oporto and Luzentales again pleaded not guilty. During the trial, the case against Ilustre was dismissed in order to utilize him as a prosecution witness.

After due trial, the court below convicted Francisco Oporto and Jose Luzentales of *estafa,* as defined and penalized by Article 316 of the Code, and sentenced each of them to suffer an imprisonment of 2 months and 1 day of *arresto mayor* and to pay a fine of ₱600, as well as to jointly and severally indemnify the Philippine National Bank in the sum of ₱600, with subsidiary imprisonment in case of insolvency, and to pay the costs. Both defendants have appealed to this Court. However, on March 15, 1957, the appeal of Oporto was dismissed by this Court for lack of interest, and on March 27, 1957, said Oporto filed a motion for the withdrawal of his appeal. In the brief of accused Jose Luzentales, his counsel contends that the lower court erred in finding that appellant Luzentales cooperated with Oporto by signing untrue certifications which induced the offended party to grant the loan, and in declaring that Oporto and Luzentales knew that the land given as security was fictitious and non-existing because their purpose was to defraud the Bank.

At the trial, Ilustre admitted his signatures appearing in all the documents presented in connection with the loan application. He said that Oporto once went to his house and the latter informed him that he (Oporto) wanted to borrow money from the Naga Branch of the Philippine National Bank and wanted him (Ilustre) to act as a witness with the promise that he would be given ₱30. Several days later, Oporto brought Ilustre to a restaurant, brought out certain papers, and requested said Ilustre to sign them. Ilustre signed the papers, which turned out to be the promissory note (Exhibit C), application for the loan (Exhibit B), tax declaration No. 157 (Exhibit D), and the deed of mortgage (Exhibit F), after he was assured by Oporto that he was merely signing the papers as a witness. Ilustre also testified that he did not buy any land from Florentina Dormido, as shown in Exhibit H; that he did not appear before appellant Jose Luzentales for the accomplishment of Tax Declaration No. 157, much less, know who declared the land in question in his name; that he did not in fact know Luzentales; that he was never investigated by Luzentales in connection with the loan and did not accompany said

Luzentales in the inspection of the land; and, that he cashed the check (Exhibit C) but the proceeds thereof were received by Oporto who gave him ₱30.

The co-makers, Irineo Gardiola and Maximo Enciso, declared that they did not know Ilustre; that they did not own the lands declared in their names under Tax Declaration Nos. 154 and 150, respectively; that it was Oporto, whom they knew, who approached them and who secured the tax declarations in their names so that they could qualify as co-makers; and, that when Gardiola was made to sign the promissory note (Exhibit A) by Oporto inside a restaurant, the signatures of Ilustre, Enciso and Luzentales were already there.

Accused Francisco Oporto testified, but appellant Jose Luzentales did not. In his testimony, Oporto admitted that he was the one who requested Gardiola and Enciso to serve as co-makers because he was then helping Ilustre in the processing and approval of his application; that he helped applicants in obtaining loans from the Bank for consideration; and, that he was compensated by Ilustre for his work. It was brought out at the trial that Oporto is the brother-in-law of Florentina Dormido. The defense presented two other witnesses—Dionisio Anadilla and Eulogio Royales, who attested that they know the land of Dormido, they being the *encargado* and owner of an adjoining land, respectively.

Because the prosecution insisted that the land offered as security was non-existent while the defense maintained that it existed, the court below appointed a commissioner to inspect the land. The commissioner submitted a report in which he stated that he found a parcel of abandoned land, partly covered with bananas and jackfruit trees, but mostly covered by bushes; and, that this was the land pointed by Dionisio Anadilla as originally owned by Florentina Dormido in barrio Ting-tingan-Anib, Sipocot, Camarines Sur, and bounded on the North by a land belonging to Eulogio Royales (Exhibit 2).

Oporto is the brother-in-law of Florentina Dormido, and yet the latter was never presented as a defense witness to identify the land and confirm its sale to Ilustre. The declarations of Gardiola and Enciso that Oporto took charge of securing tax declarations in their names and that they do not own the lands described therein finds support in the testimony of Ramon Campo, Chief Deputy Assessor, that the tax declarations in the names of Ilustre, Gardiola and Enciso were not revised in the general revision of 1948 presumably because the inspectors could not locate the properties described therein. With respect to Ilustre, we can not believe that he was totally unaware of the loan transaction in his name until he received demand letters to repay the loan. He received and cashed the

check uncomplainingly, that is, without inquiring from the Bank authorities or Oporto why a check should be made out in his name when he thought it was Oporto who applied for a loan (People *vs.* Abogado and Luzentales, CA–G.R. No. 13716–R, February 7, 1958). We are more inclined to believe that Oporto told Ilustre to act as the applicant or borrower and to pretend to be the owner of the land mortgaged, and the latter, in consideration of the sum of ₱30, readily consented to do so, as alleged in the amended information. The part of Luzentales in the conspiracy is even clearer. We are convinced that he did not inspect the land mortgaged. He favorably recommended approval of the application, submitted an income and expense report and a separate inspection report all on the same date, February 8, 1946, when the application was received in his office, despite the fact that the land allegedly consisted of 14 hectares and is located 2 kilometers away from a road. We can not readily believe that an uninterested official, exercising discretion and due diligence as any sane and reasonable man should under analogous circumstances, could thoroughly inspect a 14-hectares agricultural land situated in a barrio, evaluate its loan value, prepare all the statements required, and recommend approval of the application on the same date the said application was filed. The land was found actually planted only to a few jackfruit and bamboo trees, contrary to Luzentales' findings contained in his reports (Exhibits I and L). The forged tax declarations Nos. 150, 154 and 157 could not have been issued without the handy cooperation of Luzentales. All these facts and circumstances fully convince us that the alacrity with which Luzentales had acted on the application of Ilustre was the result not of honest haste or mere negligence but of a pre-conceived and well-knit plot to defraud the Bank. This is the phase of the case which distinguishes it from People *vs.* Luzentales, CA–G.R. No. 6690–R, April 22, 1955, cited by defense counsel. The information in that case alleged the commission of *estafa* under Article 315, No. 2 (*a*), of the Revised Penal Code committed through reckless imprudence. This Court said in that case that the indictment of conspiracy to defraud could not co-exist with reckless imprudence because the first presupposes criminal intent while the other negates it. In other words, this Court ruled in that case that there is no malice in *estafa* through reckless imprudence; without malice there is no deceit, and without deceit there is no *estafa*.

In the case at bar, the defendants are indicted of *estafa* through conspiracy to defraud—not the perpetration of that offense through reckless imprudence. In plain, where in the aforesaid case Luzentales was pictured as the victim of his own negligent acts, he is here now charged

with having knowingly and criminally acted in concert with his co-defendants to deceive the Bank. As proven here, one party needed the other to lend the swindle the semblance of a legitimate transaction. Oporto contacted Ilustre who consented to pretend ownership over the mortgaged property for a measly consideration such as ₱30. Luzentales took over from the amount Oporto had handed to him the papers already signed. In his varied and well-placed positions, Luzentales found in the loan procedure a golden opportunity to make money with seemingly infallible impunity.

Considering the allegations of the amended information and the facts proven in this case, the conviction of the defendants under Article 316 of the Revised Penal Code is correct. It is not necessary that the act be made out to prejudice the owner of the land which, in this case, does not exist. The prejudice or damage may involve even a third person like the complainant Bank. It is even enough that the act be done with the intention to cause damage, because this is the genuine condition of all the crimes to defraud (7 Groizard, Penal Code, p. 222; People *vs.* Lotivo, 40 Off. Gaz. Sup. 5, p. 104).

Wherefore, the decision appealed from is hereby affirmed in all its parts, with costs.

SO ORDERED.

Makalintal and *Castro JJ.*, concur.

Judgment affirmed.

[No. 20542-R. Agosto 18, 1958]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* EPIFANIO REYES, acusado y apelante

DERECHO PENAL; PRUEBAS; DERECHO FUNDAMENTAL DEL ACUSADO DE NO DECLARAR O SUMINISTRAR PRUEBAS CONTRA SÍ MISMO—En nuestro sistema procesal, uno de los derechos fundamentales del acusado es la exención de declarar o suministrar pruebas contra sí mismo (Sec 1, Regla III, Reglas de los Tribunales; Art. III, Sec. 1, (18) Constitución de Filipinas). En consonancia con este derecho, un acusado no puede ser obligado a escribir siguiendo un dictado del fiscal o de otra persona, con el objeto de determinar si el mismo es el autor de un documento que se supone falsificado (Beltran *vs.* Samson, 53 Phil. 578). El criterio adoptado en esta causa debe diferenciarse del expuesto en la causa de Villaflor *contra* Summers, 41 Phil. 62 puesto que en la causa de Villaflor el objeto del incidente era el examen del cuerpo de la acusada y ésta no estaba obligada a ejecutar un acto positivo.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Nueva Ecija. Montesa, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Honorio V. Garcia, en representación del acusado y apelado.

El Procurador General Edilberto Barot y *el Procurador Ceferino P. Padua,* en representación del querellante y apelante.

HERNÁNDEZ, *M.:*

Epifanio Reyes fué acusado ante el Juzgado de Paz de Talavera, Nueva Ecija en dos causas separadas, una por robo que se ha registrado como causa criminal núm. 688 y otra por violación archivada como causa criminal núm. 689 del mismo Juzgado. Elevadas las causas al Juzgado de Primera Instancia de la misma provincia, un abogado especial, aparentemente de la oficina del fiscal provincial, presentó una querella por robo con violación en la causa criminal núm. 4650 que es la causa núm. 688 por robo procedente del Juzgado de Paz de Talavera. Después de la vista correspondiente, el Tribunal encontró al acusado Epifanio Reyes culpable del delito de violación y en consonancia con el Artículo 335 del Código Penal Revisado le impuso la pena indeterminada de seis (6) años y un (1) día de prisión mayor, como mínima, a dieciocho (18) años de reclusión temporal, como máxima, a indemnizar a la ofendida, Rosario Barcelona la cantidad de ₱5,000.00, sin prisión subsidiaria en caso de insolvencia dada la naturaleza de la pena y a pagar las costas.

En la presente apelación, Epifanio Reyes ataca la suficiencia de las pruebas de la acusación para sostener un fallo condenatorio.

Las pruebas de la acusación tienden a demostrar que en la madrugada del 5 de noviembre de 1956, Rosario Barcelona se hallaba dormida en su casa situada en el barrio de Minabuyok, Talavera. Rosario es de 23 años de edad, casada, pero su marido había salido dos días antes para buscar trabajo en otra parte. Al lado de Rosario se encontraba su criatura de unos 5 meses. Las pruebas de la acusación no demuestran donde se hallaba dormido el otro hijo de Rosario de unos 3 años de edad a la hora indicada. La puerta de la casa estaba cerrada pero sin tranca. Rosario se despertó porque alguien la besaba y tocaba sus pechos. Al despertarse, reconoció las facciones del apelante pero no estaba aún segura de la identidad del mismo. Cuando empezó a moverse Rosario, el apelante la apuntó con algo que Rosario creyó era un arma de fuego porque el cañon tocaba su pecho, diciéndola que no gritara de lo contrario él la mataría. Dicho esto, levantó la ropa que Rosario tenía puesta y tuvo contacto carnal con la misma. Después de terminado el acto carnal, el apelante quitó un pañuelo doblado que estaba sujetado a la pechera del camisón con un imperdible; abrió dicho pañuelo y se apoderó de un billete de ₱20.00 que estaba dentro. Rosario Barcelona se levantó y encendió una lámpara. En este instante el apelante se puso delante de Rosario y apuntando otra ves su arma al costado de Rosario la conminó que no dijera a nadie lo que había pasado de lo contrario él la mataría. Dicho esto, el apelante salió de la casa de Rosario. Cuando el apelante estaba por dejar la casa y estando en la puerta de entrada, Ladislao Ortiz que tenía una sementera a cinco metros de la casa de Rosario, oyó un ruido en la puerta y se paró; enfocó su *flashlight* hacia la puerta y vió al apelante bajando de la casa con una escopeta en una de sus manos. Ladislao Ortiz que estaba regando su sementera se alejó del lugar y continuó con su trabajo (pag. 23, t.n.t. Cando).

Rosario permaneció en su casa el resto de la noche y a eso de las 6:00 de la tarde del mismo día, 5 de noviembre, se trasladó a la casa de sus suegros con sus dos hijos. A eso de las 7:00 de la noche, llegó el apelante y estuvo conversando con los suegros de Rosario. El apelante pidió prestado un lapiz de Ceferino Mudlong, cuñado de Rosario mientras ésta estaba acostada leyendo un número del *Liwayway*. Mudlong entregó al apelante un cuaderno donde se hallaba insertado entre las páginas un lapiz.
El apelante estuvo escribiendo por unos 20 minutos y después se despidió de Mudlong pero éste no contestó porque ya estaba dormido (pag. 4, t.n.t. Cando) y cuando el apelante pasó cerca del lugar donde estaba acostada Rosario dando el pecho a su criatura, tiró una carta a Rosario que es del tenor siguiente:

"TANGING SAIYO MAHAL KO:

Mahal ko dahil sa wala akung pagkakataon upang masabi ko saiyo ang mga pangyayari sa ating dalawa kung kayat minarapat ko nakahit sa ganitong bagay man lamang ay magkaintindihan kita.

Mahal ko napansin ko na tila labis mung dinamdam ang mga bagay naginawa ko subali't kung pakalilimiin mo lamang saiyung sarili ang kabalahan ng mga bagay nayoon ay hindi mo dapat ipaghinanakit sapagkat dapat mung malaman nakapag ito ay binalak mung paabutin pa sa kaalaman ng iba ay asahan mung tiyak na mangyayari ang sinabi ko saiyo na ako ay handang pumatay at magpakamatay + punitin mo pagkabasa mo."
(Exh. "A")

Estos son los hechos que se desprenden de las declaraciones prestadas por Rosario Barcelona y Ladislao Ortiz.

El acusado en esta causa contiende que en el mes de febrero de 1956 Rosario Barcelona obtuvo de él un préstamo de ₱5.00 con la promesa de pagar algún tiempo después. Estuvo requiriendo a Rosario el pago del préstamo y como ésta no podía pagar la deuda, hubo encuentros frecuentes entre los dos y empezaron sus relaciones íntimas que culminó en un contacto carnal en dicho mes. Desde entonces él solía dar dinero a Rosario en pequeñas cantidades de ₱3.00, ₱2.00 y a veces ₱1.00, y cuando el marido estaba ausente solía yacer con Rosario.

En la mañana del día de autos el apelante se enteró de que el marido de Rosario Barcelona había salido de su casa porque él estaba en el lugar cuando el marido bajó de su casa y en aquella misma mañana visitó a Rosario después de haber salido el marido (pag. 37, t.n.t. Cando). A la noche de aquel día volvió a la casa de Rosario y mientras estaban yaciendo, Ladislao Ortiz pasó por la casa y atisbando por un agujero del tabique enfocó hacia ellos su *flashlight* y se echó a reir (pag. 34, t.n.t., id). Tanto el apelante como Rosario reconocieron a Ladislao Ortiz por la risa de éste y porque en los tabiques de la casa habían varios agujeros y Ladislao Ortiz atisbó por un agujero y por ese mismo agujero enfocó su *flashlight* (pag. 40, t.n.t., id). Después del acto y antes de dejar la casa, el apelante dijo a Rosario que no se preocupara de Ortiz porque iría a hablar a éste. Serían como las 11:00 de la noche cuando el apelante pasó por la casa de Ladislao Ortiz y cuando vió a éste en el balcón habló con Ortiz y éste prometió que no divulgaría a nadie el incidente (pag. 47, 48, t.n.t., id). El apelante negó que fuese el autor de la carta exhibido "A". Negó asimismo que hubiese robado los ₱20.00 de Rosario y que haya amenazado a ésta. Declaró que solamente terminó el segundo grado y a penas puede escribir su nombre. En repreguntas surgió este incidente:

* * *

Fiscal:

"Q.—You said you can write. Can you show us specimen of your handwriting?

Atty. Garcia:

Before the witness answers, please tell him it is within his right to refuse. If he wants it, it is okay.

Court:

This rule does not apply to him because he is the accused.

Atty. Garcia:

We object to the Fiscal's question.

Court:

Let the witness answer." * * * (pag. 45, t.n.t., Cando)

En vista del criterio del Tribunal arriba expresado, el testigo trazó 10 veces su nombre y apellido en un pedazo de papel (Exhibido "B"). En contrapruebas, la acusación llamó a Ladislao Ortiz que negó la supuesta conversación entre él y el apelante, y a Ceferino Mudlong cuya declaración refiriéndose a la carta (Exh. "A") es como sigue:

* * *

Fiscal:

"Q.—According to the accused Epifanio Reyes he did not write Exhibit B–1, is that correct?

Atty. Garcia:

No basis.

Court:

Let the witness answer.

A.—He knows how to write, sir. He was the one who wrote that letter, sir.

Court:

Q.—How do you know?

A.—I saw him write, sir.

Atty. Garcia:

At this stage, we request this manifestation to be recorded—that the prosecutor showed Exhibit B–1 to the witness. He did not even glance at it and he answered readily that it was written by the accused, without reading it.

Fiscal:

Q.—Have you examined this Exhibit B–1?

A.—Yes, sir. The two of us read that letter often.

Q.—Why?

A.—Because he goes to our house often, sir.

Fiscal:

That is all." * * *

(pag. 50, t.n.t., Cando)

La referencia al Exhibido "B–1" es erronea puesto que no hay tal *exhibit,* debe referirse a la carta que es el Exhibido "A".

Estas son las pruebas de las partes en esta causa. En la presente apelación, el acusado contiende que el Juzgado erró al obligarle a trazar durante la vista sus firmas varias veces en un pedazo de papel y contiende, además que las pruebas aportadas en esta causa son insuficientes para sostener un pronunciamiento condenatorio.

Con respecto a la primera cuestión, es sabido que en nuestro sistema procesal, uno de los derechos fundamentales del acusado es la exención de declarar o suministrar pruebas contra sí mismo (Sec. 1, Regla 111, Reglas de los

Tribunales; Art. III, Sec. 1 (18) Constitución de Filipinas). En consonancia con este derecho, se ha declarado que un acusado no puede ser obligado a escribir siguiendo un dictado del fiscal o de otra persona, con el objeto de determinar si el mismo es el autor de un documento que se supone falsificado (Beltran *vs.* Samson, 53 Phil. 578). El criterio adoptado en esta causa debe diferenciarse del expuesto en la causa de Villaflor contra Summers, 41 Phil. 62, puesto que en la causa de Villaflor el objeto del incidente era el examen del cuerpo de la acusada y la acusada no estaba obligada a ejecutar un acto positivo. Sobre este extremo nuestro Tribunal Supremo dijo lo siguiente:

"The difference between this case and that of Villaflor *vs.* Summers (41 Phil., 62), is that in the latter the object was to have the petitioner's body examined by physicians, without being compelled to perform a positive act, but only an omission, that is, not to prevent the examination, which could be, and was, interpreted by this court as being no compulsion of the petitioner to furnish evidence by means of a testimonial act; all of which is entirely different from the case at bar, where it is sought to make the petitioner perform a positive testimonial act, silent, indeed, but effective, namely, to write and give a sample of his handwriting for comparison." (Pag. 572, Vol. 53)

Tal vez se argüirá que habiendo el acusado ocupado la silla testifical y habiendo negado ser el autor de la carta Exhibido "A", el acusado estaba sujeto a las mismas reglas que cualquier otro testigo. En la misma decisión que acabamos de acotar se encuentra una contestación a este argumento:

"For this reason it was held in the case of First National Bank *vs.* Robert (41 Mich., 709; 3. N. W., 199), that the defendant could not be compelled to write his name, the doctrine being stated as follows:

"The defendant being sworn in his own behalf denied the indorsement.

"He was then cross-examined and questioned in regard to his having signed papers not in the case, and was asked in particular whether he would not produce signatures made prior to the note in suit, and whether he would not write his name there in court. The judge excluded all these inquiries, on objection, and it is of these rulings that complaint is made. The object of the questions was to bring into the case extrinsic signatures, for the purpose of comparison by the jury, and we think the judge was correct in ruling against it."

(Pags. 575–576, *supra*, Vol. 53)

El fiscal con un poco de diligencia pudo haber suministrado al Tribunal nuestras de las firmas del apelante, mediante la presentación de testigos que pudieron haber identificado las firmas "Epifanio Reyes" que aparecen en el mismo expediente. Encontramos, por consiguiente, meritorio el primer señalamiento de error y entendemos que al determinar si el exhibido "A" ha sido escrito por el apelante u otra persona, debemos prescindir del exhibido

"B" que son las firmas trazadas por el apelante durante la vista.

Nos resta ahora analizar las pruebas contra el aquí apelante que se reducen el testimonio de Rosario Barcelona, Ladislao Ortiz y la carta arriba acotada. El Tribunal *a quo* al no dar crédito al testimonio de Rosario Barcelona sobre el robo dijo lo siguiente:

"The Court, however, is not convinced that after committing this crime, he also took the amount of twenty pesos which she had tucked inside her dress. It is simply difficult to understand that the accused could have known that there was such money during the dark moment that he was performing the sexual act upon her. It is incredible that she kept the only money she had in the world in that place while she was asleep, and if it was there, the accused could have known that it was money. He would have no reason, therefore, to take it away from her."
(Pag. 60 del Expediente)

El Tribunal *a quo* dió, sin embargo, crédito a Rosario sobre la alegada violación porque el testimonio de ésta en cierto modo, según el Tribunal, está corroborada por la declaración de Ladislao Ortiz y por el propio acusado quien admitió que tuvo contacto carnal con la ofendida en la noche de autos. Se trata de un delito grave castigado con una pena severa y debemos examinar con cuidado las pruebas de las partes. Es cierto que el acusado admite contacto carnal con Rosario pero contiende que semejante acto ha sido consentido por la ofendida. La cuestión, por consiguiente, a determinar es si hubo empleo de intimidación de parte del apelante.

La ofendida admite que en la noche de autos no gritó en demanda de socorro de sus vecinos porque tenía miedo al apelante. Se recordará que según la ofendida, el acusado estuvo besándola y manoseando sus pechos por unos dos minutos antes de amenazarla de muerte si gritaba. De la declaración de la ofendida se desprende claramente que ella no pudo gritar y no pudo ofrecer resistencia por la amenaza que hizo el apelante en la noche de autos. Para justificar su declaración de que tuvo miedo en la noche de autos declaró que el acusado estaba armado. Notamos cierta deficiencia en las pruebas de la acusación sobre este punto importante, puesto que el fiscal no hizo preguntas a la testigo que clase de arma llevaba el apelante y no hizo esfuerzos para que Rosario describiera aproximadamente la clase de arma que llevaba el acusado. Si estando el acusado sobre Rosario aquel tenía su arma de fuego apuntada a Rosario, semejante arma debe ser un revolver o una pistola y en efecto Rosario en su affidavit (Exh. "1") dijo que el arma era corta. Se recordará que según Ortiz el apelante llevaba una escopeta. La acusación no hizo esfuerzos para armonizar estas declaraciones, y el expediente no demuestra que se haya hecho un registro domiciliario en la casa del apelante.

Ladislao Ortiz en la noche de autos sabía que el marido de Rosario Barcelona no estaba en casa, con todo, no llamó a la ofendida después de que hubo salido el apelante para preguntarla que había pasado. En estos casos, lo ordinario es que un vecino al ver a uno armado de arma de fuego, salir de la casa de un amigo sospecharía que algo anormal ha ocurrido y por un impulso cristiano subiría a la casa o preguntaría desde abajo si algo ha pasado. Se recordará que según Rosario, después del acto carnal ella se levantó y encendió una lampara de petroleo y el apelante después de amenazarla con su arma salió de la casa. De esto se desprende claramente que había luz encendida cuando el apelante salió de dicha casa, pero Ladislao Ortiz declaró que la casa estaba a oscuras y preguntado por qué no subió a la casa después de que hubo salido el apelante, contestó que no tenía nada que ver con el incidente y añadió que cómo él no habia oido ningún grito creyó que todo lo que había ocurrido en la casa estaba bien, pero cambió de opinión cuando llegó el marido y le preguntó si sabía que había pasado (pag. 30, t.n.t, Cando)

Pasemos ahora a considerar la carta. Hemos considehaya escrito el Exhibido "A" para luego entregar a la manera como se escribió esta carta en la noche del día 6 de noviembre y la misma nos parece bastante chocante. Encontramos insólito que el acusado después de haber cometido el supuesto crimen en la madrugada de aquella fecha se haya presentado en la casa de los suegros de Rosario Barcelona a eso de las 7:00 de la noche y dentro de la misma y en presencia de los moradores de la casa haya escrito el Exhibido "A" para luego entregar a la misma ofendida suministrando a ésta una pieza de prueba documental en contra del propio apelante. Nuestra duda sobre este alegado incidente de la causa se acentúa mucho más si tenemos en cuenta la declaración del testigo Ceferino Mudlong de que el acusado fué quien escribió la carta porque los dos, el apelante y el testigo, han leído varias veces la carta porque el apelante solía frecuentar la casa del testigo. Si esto es así, resulta evidente que la carta (Exh. "A") se ha escrito muchos días antes de la noche de autos y contradice abiertamente la teoría de Rosario Barcelona de que dicha carta se escribió en la noche del 6 de noviembre.

No acertamos tampoco a comprender por qué Rosario, si realmente ha sido violada la noche anterior, en presencia del acusado estuvo dando el pecho a su criatura exhibiendo sus senos que incitaron los deseos lascivos del apelante. Según Rosario estaba ella a dos metros del apelante.

Con respecto al tenor de la carta, el primer párrafo de la misma revela más bien los deseos de un enamorado de comunicarse con la mujer amada; en el segundo párrafo se refiere a ciertas cosas que habían ocurrido entre los

dos, y en el último párrafo del mismo se dice que si la ofendida llegara a divulgar las cosas que habían pasado entre ellos, el apelante sería capaz de matar y matar a sí mismo. Termina pidiendo a la destinataria que rompiera la carta. Si bien hay una especie de conminación en el segundo párrafo de la carta, a nuestro juicio, el conjunto de la misma no revela que el autor ha cometido una violación. Los encabezamientos de la carta donde se dice: "Mahal ko" y luego el final de la misma donde se pide a la persona a quien se dirige la carta que rompiera la misma después de ser leida, abonan esta opinión.

Se recordará que según Rosario, el apelante escribió la carta sobre el brazo de la cama. La acusación no se molestó en pedir a la testigo que describiera dicho brazo. En el curso de su declaración Rosario dijo que los postes de la cama de caña sobresalían y había una tabla de madera sobre estos postes. No describió la anchura de esta tabla de madera y no podemos imaginar como era la cama. Es bien sabido que ordinariamente en estas camas de caña vulgarmente llamadas *papag,* los travesaños y postes son también de caña y son de poca elevación. Hemos examinado la carta (Exh. "A") y las letras estan bien trazadas, el tagalog es bastante correcto y es algo dificil de creer que la carta se haya escrito en la forma indicada por Rosario. Por otro lado, de la declaración de Mudlong se infiere que la carta ya estaba preparada antes del 7 de noviembre. Notamos una marcada exageración en la declaración de Mudlong puesto que siendo Rosario esposa de su hermano no se concibe que el apelante haya demostrado al testigo la carta en diferentes ocasiones. Rosario Barcelona no pretende haber relatado a sus suegros la supuesta violación. Sólo relató a su marido dicha violación el día 6 cuando su marido volvió a su casa del barrio de Sta. Rosa.

Ladislao Ortiz no mencionó la extensión de su terreno pero según el mismo empezó a regar su arrozal a eso de las 6:00 de la tarde. Cerca de la casa de Rosario estaba el canal de riego y era cuestión de abrir el dique para sacar agua del canal. Según el mismo testigo, el palay sembrado en el terreno fué recolectado el mes de enero. Ortiz no explicó por qué estuvo unas 8 horas o más en su terreno aquella noche. La casa del testigo dista solamente unos 30 metros de la de Rosario y del arrozal y no explicó por qué permaneció tanto tiempo en su sementera. La casa de Rosario sólo dista unos 25 metros de la de sus suegros.

Por el análisis que hemos hecho de las declaraciones de los testigos de la acusación; por las contradicciones arriba apuntadas; por la tendencia de los mismos a exagerar los hechos, y por la declaración de Mudlong—que contradice abiertamente la teoría de Rosario sobre la redacción de la

carta—dudamos de la veracidad de Rosario sobre el alegado empleo de la intimidación durante el acto carnal y entendemos que el acusado es acreedor al beneficic de la duda.

POR TANTO, por duda razonable se absuelve al acusado de la querella de autos y se ordena su libertad inmediata si no estuviese detenido o preso en otra causa. Se declaran *de oficio* las costas.

Gutiérrez David, Pres. y *Martinez, M.*, estan conformes.
Se revoca la sentencia.

[No. 14839–R. August 26, 1958]

ESTEFANIA EUGENIO, plaintiff and appellant, *vs.* FELICIANO GAON, defendant and appellee

HOMESTEAD; CONVEYANCE; DATE FROM WHICH TO COUNT THE FIVE-YEAR PERIOD TO REPURCHASE.—The law itself is silent on what is to be deemed the date of conveyance of a homestead duly patented. The jurisprudence thereon which for some time was unsettled, has finally been set at rest by the Supreme Court in the following pronouncement in the case of Jaime Abogado *vs.* Igmedio Aquino, et al., G. R. L–8773, promulgated on October 31, 1956: "* * * the five-year period within which a homestead land sold by a patentee may be repurchased by him, his widow or legal heirs, starts from the date of execution of sale and not from the date of registration or issuance of the certificate of title after registration of the deed of sale."

APPEAL for a judgment of the Court of First Instance of Isabela. Arranz, *J.*

The facts are stated in the opinion of the Court.

Quintin B. Alcid, for plaintiff and appellant.
Fausto G. Cabotaje, for defendant and appellee.

CASTRO, *J.:*

In her complaint of June 8, 1950, the plaintiff Estefenia Eugenio seeks the annulment of the deed of sale, Exhibit A, signed by her on March 31, 1941, allegedly through fraud and misrepresentations exercised by the defendant Feliciano Gaon, whereby she conveyed to the latter a parcel of homestead land. On June 19, 1953, over the objection of the defendant, the trial court admitted her amended complaint which carries the alternative cause of action, should the action for annulment fail, that she be allowed to repurchase the land in question.

On June 24, 1954, both parties through their respective counsel submitted a stipulation of facts, which we hereunder quote in full:

"1. That on June 8, 1950, plaintiff through counsel filed an action against the defendant for the annulment of the Deed of Sale, Exhibit A, found on Folio No. 4 of the records;

"2. That the parcel of land in question described in paragraph 2 of the amended complaint sold under the Deed of Sale, Exhibit A, was acquired by the plaintiff under the homestead provisions of the Public Land Law;

"3. That on June 19, 1953, plaintiff, through counsel, filed an amended complaint the amendment consisting of an alternative cause of action to repurchase the land in question from the defendant should the questioned deed of sale Exhibit A, be found to be valid and binding, as provided in Section 119 of the Public Land Law;

"4. That the said Deed of Sale, Exhibit A, was registered in the office of the Register of Deeds of Isabela on May 23, 1946 by reason of which Transfer Certificate of Titile No. T–2375 was issued in the name of the defendant in lieu of Original Certificate of Title No. I–3553, covering the land in question, issued in the name of the plaintiff;

"5. That on June 25, 1953, the defendant filed an opposition to the admission of the amended complaint, on the ground that the Alternative Cause of Action sought to be introduced in the Amended Complaint is barred by the statute of limitations or has prescribed; that is, on June 19, 1953, the action to repurchase as provided in Section 119 of the Public Land Law has prescribed, the deed of sale having been registered on May 23, 1946 as stated in the next preceeding paragraph;

"6. That on June 27, 1953, this Honorable Court admitted the amended complaint in the following tenor:

> 'This is a motion filed by counsel for the plaintiff asking for the admission of the amended complaint on file in the record. The amendment seeks to introduce an alternative cause of action alleging that in case the Court finds that the sale in favor of the defendant is valid and binding, that the plaintiff be allowed to exercise her right to repurchase the homestead under Section 117 of Act No. 1874, as amended by Section 119 of Commonwealth Act No. 141, the land subject of controversy being covered by a homestead title.
>
> 'Inasmuch as the incorporation of the third cause of action will not prejudice the right of the defendant;
>
> 'WHEREFORE, the opposition to the admission of the amended complaint should be, as it is hereby, denied. * * *;'

"7. That on July 7, 1953, the defendant, through counsel, filed a motion for reconsideration of the order dated June 27, 1953, stated in the next preceding paragraph, on the ground that the admission of the amended complaint prejudices the rights of the defendant for by the admission of the amended complaint, the alternative cause of action which has already prescribed or dead at the time of the filing of the amended complaint, would be to revive and defeat the plea of statute of limitations;

"3. That on April 10, 1954, this Honorable Court entered the following order on the said motion for reconsideration, to wit:

> 'This is a motion filed by Mr. Silvestre B. Bello, counsel for the defendant, asking that the alternative cause of action, relative to repurchase of the homestead as embodied in the amended complaint, be dismissed alleging that the same has already prescribed.
>
> 'Inasmuch as the motion purports to dismiss one of the causes of action only and the resolution of same, if found to be well-taken, would not throw the case out of court because the principal cause of action which is the annulment of the supposed contract of sale still subsists, the Court believes that the end of justice is better served should the legal question raised in the motion to dismiss be passed upon in the decision after trial on the merit;'

"9. That the plaintiff, through counsel, now abandons the first cause of action, that is, for the annulment of the deed of sale, Exhibit A, and is willing to repurchase the land in question under Section 119 of the Public Land Law, as embodied in the alternative cause of action in the amended complaint;

"10. That both parties submit for the resolution of this Honorable Court the only legal question whether the right to repurchase, incorporated in the amended complaint filed on June 19, 1953, is barred by the statute of limitations or has prescribed with the deed of sale, Exhibit A, having been registered on May 23, 1946, and with the filing of the original complaint on June 8, 1950.

"WHEREFORE, it is respectfully prayed this Honorable Court that upon the foregoing agreed stipulation of facts, a decision be rend-

ered, and that both parties respectfully pray that they be given fifteen (15) days within which to file their respective memoranda."

On the efficacy of the above stipulation of facts, the lower court, on October 15, 1954, dismissed the complaint on the ground that the plaintiff's right to repurchase the land had already prescribed.

The plaintiff now claims that the lower court erred:

"1. In deciding the case on an issue not the one submitted upon agreement of the parties;

"2. In finding that the deed of sale was executed on March 31, 1941; and

"3. In not allowing the repurchase of the land in question by the plaintiff-appellant."

The plaintiff contends that the only question submitted to the lower court for resolution is whether, computing the five-year period (allowed by law for the repurchase) from May 23, 1946, the date when the deed of sale (exh. A) was registered, her right of repurchase has already prescribed. She avers that both parties, in their stipulation of facts, considered the date of the deed of sale (March 31, 1941) as extraneous and immaterial, and tacitly agreed that the period for repurchase shall be computed from the date of registration of the deed of sale. She claims that "to assume that she would enter into the stipulation of facts with the thought that the five-year period as provided for in section 119 of the Public Land Law would be computed from the date of the deed of sale would be ridiculous, it appearing on the said deed of sale that it was executed on March 31, 1944", and it further appearing that she filed her original complaint only on June 8, 1950.

The above assertions of the plaintiff do not find support in the phraseology of the stipulation of facts, which is clear, simple and unambiguous. To adopt the line of argument of the plaintiff would be to impute absurdity to the defendant, for obviously, by the same token, the latter would not agree to a computation of the five-year period from the date of the registration of the deed of sale, because elementary arithmetic would show that the period from May 23, 1946 to June 8, 1950 is less than five years.

Disregarding the sophistry of both parties, we believe that the issue before the lower court, and now before this Court, in view of the stipulation of facts, is simply whether the right of the appellant to repurchase the land in question had already prescribed when her original complaint was filed.

The resolution of this issue would seem to depend on the correct answers to two questions:

1. When was the deed of sale, exhibit A, executed by the parties? The lower court deemed the resolution of this question of fact necessary as a basis for the resolution of the question of law involved.

2. From what date should the five-year period given by law for the repurchase of the land be reckoned? This is purely a legal question that can be properly resolved only after basic findings of fact have been reached.

The plaintiff notes that although the date of the deed of sale is mentioned in the pleadings, it was entirely disregarded in the stipulation of facts. So she argues that there having been no evidence adduced by the defendant establishing the due execution of the sale or the date of the deed of sale, the trial court erred in at all considering the date of the deed of sale, and instead it should have computed the five-year period from the date of the registration of the deed of sale. We confess that we cannot appreciate this kind of reasoning urged upon us by the plaintiff. She takes the position that she has abandoned her first cause of action, which is the annulment of the sale, and that all that she now desires is that she be allowed to repurchase the land that she has sold. In the next breath she says in effect that there is no evidence that the land has been actually sold by her. It is with unconcealed candor that we regard these contradictory averments of the plaintiff as unmitigatedly absurd.

We have the stipulation of facts as a starting point. It was entered into by both the plaintiff and the defendant freely, willingly, and without reservations. It is couched in completely understandable language. In it the plaintiff states in unmistakable terms that all she wants is to repurchase the land in question. She allows the date of the registration of the sale to be mentioned in the said stipulation, but meticulously avoids mention of the date of the deed of sale. It would seem to us, using only the merest fundamentals of reasoning, that the lower court was with power to proceed upon the stipulation as a working premise and determine for itself other essential facts needed for a legally correct and morally just decision. As a corollary, the lower court was also with power to make inferences and assumptions that inevitably flow from the facts agreed upon by both parties. When the plaintiff agreed to the correctness of the date of the registration of the deed of sale, without making any reservations or contrary averments, does it not stand to reason that she impliedly admitted that there was in fact a valid sale by means of an efficacious deed of sale? To entertain any other conclusion would do violence to the rudiments of human reason. If there was a valid sale by means of a deed of sale, does it not necessarily follow that the deed of sale was executed on a certain day recorded in the calendar universally used by man? If so, and we do not see elsewise, then the lower court was with power to determine the exact date when the said deed of sale was executed. This it proceeded to do, although as a matter of fact it did not need to do so, because the deed of sale itself was incor-

porated by the plaintiff as an integral part of her amended complaint.

In the light of what we have stated, we are of the opinion and so hold that the validity, genuineness, due execution and date of the deed of sale (Exhibit A), are now beyond the power of the plaintiff to deny or impugn, and that the lower court properly exercised its prerogatives in taking into consideration all facts inextricably involved in the matter before it.

The resolution of the question from what date the five-year period for repurchase should be reckoned, depends on the proper interpretation of section 119 of Commonwealth Act 141, otherwise known as the Public Land Law. The said provision of law reads as follows:

> "Every conveyance of land acquired under the free patent and homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

The law itself is silent on what is to be deemed the date of conveyance. Is it the date of the instrument of conveyance, or is it the date of the registration of the said instrument in the office of the register of deeds? The jurisprudence thereon which for some time was unsettled, has finally been set at rest by the Supreme Court in the following pronouncement in the case of Jaime Abogado *vs.* Igmedio Aquino, et al, G. R. L–8773, promulgated on October 31, 1956:

> "* * * the five-year period within which a homestead land sold by a patentee may be repurchased by him, his widow or legal heirs, starts from the date of execution of the instrument of sale and not from the date of registration or issuance of the certificate of title after registration of the deed of sale."

It is clear therefore that the date of the deed of sale (Exhibit A), which is March 31, 1941, is to be deemed the date of conveyance from which the five-year period for repurchase is to be computed. It follows that the plaintiff's right to repurchase the land in question expired on March 31, 1946. It appearing that the original complaint was filed on June 8, 1950, and conceding that the alternative cause of action—the claim to the right to repurchase—in the amended complaint retroacts as of the date of the filing of the original complaint, the conclusion is inescapable that the plaintiff's right to repurchase the land in question has already prescribed.

The averment of the plaintiff that the purchase price of the land in question was unconscionable, even if true, has no bearing whatsoever on the issue posed by her.

WHEREFORE, the judgment appealed from, being in accord with law and the evidence, is hereby affirmed, with costs against the plaintiff-appellant.

De Leon and *Makalintal JJ.*, concur.

Judgment affirmed.